

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF MASSACHUSETTS

GE HFS HOLDINGS, INC., f/k/a	)	
HELLER HEALTHCARE FINANCE, INC.,	)	
Plaintiff	)	
and	)	
MICHAEL INGOLDSBY,	)	CIVIL ACTION
Intervenor / Plaintiff	)	05-CV-11128-NG
vs.	)	
	)	
NATIONAL UNION FIRE INSURANCE COMPANY	)	
OF PITTSBURGH, PA and	)	
INTERNATIONAL INSURANCE GROUP, LTD.,	)	
Defendants	)	

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT  
INTERNATIONAL INSURANCE GROUP, LTD.'S  
MOTION FOR SUMMARY JUDGMENT

The defendant, International Insurance Group, Ltd. ("I.I.G.") submits the foregoing Memorandum of Law in support of their Motion for Summary Judgment directed to the claims of the Intervenor/Plaintiff, Michael Ingoldsby (hereafter referred to as "Plaintiff" or "Ingoldsby").

FACTS

I.I.G. began doing business with Managed Health Care Systems, Inc. (M.H.C.S.") in 2000. I.I.G. placed directors and officers liability/employment practices liability insurance for M.H.C.S. with a policy from National Union Fire Insurance Company of Pittsburgh, PA ("National Union"). This initial policy, as well as the subsequent renewal, was placed through a wholesaler, Carpenter

Moore Insurance Services, Inc. The policy ran from August 4, 2000 until August 4, 2001.

The policy was renewed the following year, effective on August 4, 2001. In the time period leading up to the renewal, I.I.G. received a renewal quote from Carpenter which was faxed to M.H.C.S. along with a letter dated July 31, 2001. The contents of this fax in their entirety are attached as **Exhibit A**. The fax, which was sent by Nicholas Sciotto of I.I.G. to Pamela Jones of M.H.C.S., included a four (4) page attachment titled "For-Profit Health Care Organization Amendatory Endorsement." Section II of this attachment, titled "Amendments to Exclusions," contains the following change with regard to an exclusion for contractual liability.

1. Exclusions 4 (h) is deleted in its entirety and replaced with the following:

[The insurer shall not be liable to make any payment for Loss...]

(h) alleging, arising out of, based upon or attributable to any actual or alleged contractual liability of the company or an Insured under any express (written or oral) contract or agreement (including, but not limited to, any liquidated damages, severance agreement or payment, golden parachute agreement, or any compensation agreement payable upon the termination of any insured); provided however, that this exclusion shall not apply to:

- (1) Employment Practices Claims to the extent that any liability does arise from such express contract or agreement; or
- (2) Claims for Loss alleging Wrongful Acts of an insured(s) with respect to hospital practices, privileges, credentialing or peer review matters.

M.H.C.S. accepted the renewal proposal and coverage was bound as of August 4, 2001. The entire policy, including declarations, forms and

endorsements, was received by I.I.G. on January 2, 2002 and forwarded to M.H.C.S. on January 4, 2002. A “final version” of the policy was received by I.I.G. on January 11, 2002 and sent to M.H.C.S. on January 21, 2002. Both versions of the policy sent to M.C.H.S. contained the “Exclusion 4(h)” referenced in the July 31, 2001 letter, **Exhibit A**.

M.H.C.S. filed for bankruptcy, initially under Chapter 11 (reorganization) and then under Chapter 7 (liquidation). Heller Healthcare Finance, Inc., (“Heller”) a secured creditor of M.H.C.S., filed suit against M.H.C.S. and its directors and officers, including Intervenor/Plaintiff Michael Ingoldsby (“Ingoldsby”). Heller brought suit against Ingoldsby, a shareholder of M.H.C.S., for fraudulently misrepresenting Medicaid reimbursement certifications that were presented as security for various lines of credit.

National Union denied coverage to M.H.C.S. and Ingoldsby because the Heller lawsuit arose from a funding contract, which was excluded under the “contractual liability exclusion” of the Directors & Officers policy. In November of 2005, I.I.G. produced their file in response to a subpoena from Ingoldsby in connection with the Heller litigation. In December of 2005, Ingoldsby impleaded I.I.G. into the case, claiming that “[u]pon information and belief, the Renewal Proposal provided by International did not include a copy of endorsement No. 8, which amended exclusion 4(h) and, in doing so, limited coverage related to claims arising from contractual liability. See Ingoldsby Complaint at ¶14. This

allegation was reiterated by Ingoldsby in an Affidavit dated September 18, 2006, in which he stated:

9. On or about July 31, 2001, IIG provided MHCS with National Union's Renewal Proposal (the "Proposal") which detailed, among other items, endorsements to be added to the base policy.
10. The policy provided by IIG did not include a copy of Endorsement No. 8, which amended Exclusion 4(h) and, in doing so, limited coverage related to claims arising from contractual liability. In addition, the copy of the Policy which I received was not bound.

See Ingoldsby Affidavit, **Exhibit B**. Accordingly, Ingoldsby's position in this lawsuit was that I.I.G. did not advise M.H.C.S. of the contractual liability exclusion.

However, Ingoldsby was recently deposed on October 20, 2006. During the deposition, Ingoldsby testified concerning M.H.C.S.'s notice of the contractual liability exclusion at issue in this case:

- Q. Do you believe that the copy that you received [of the National Union Renewal Proposal] was a copy that someone at the MHCS office had made and then sent to you?
- A. Oh, yes.
- Q. Can you tell me what the basis is for the first sentence of paragraph ten of your affidavit?
- A. The copy that I got didn't have that endorsement. When I wrote this up, that was my belief, that wasn't there. I think that's all that means.
- Q. It's your testimony that the copy you received did not have Endorsement 8 [the contractual liability exclusion]. Do you know for a fact whether the copy that was provided by IIG to MHCS included a copy of Endorsement 8?
- A. I later learned that it was included.

Deposition of Michael Ingoldsby, p. 88, l. 5-18, attached as **Exhibit C**.

### ARGUMENT

The Court should grant summary judgment to I.I.G. because Ingoldsby has not stated a prima facie claim against I.I.G. First and foremost, Ingoldsby is no longer claiming that I.I.G. did not inform M.H.C.S. of the subject exclusion, as he conceded in his deposition that he was mistaken when he made this allegation. Second, I.I.G. did not have a duty to advise M.H.C.S. as to what insurance coverage they should purchase. It is equally clear that I.I.G. did not have a duty to advise Ingoldsby himself as to what coverage to purchase, as I.I.G. had no contact whatsoever with Ingoldsby aside from a brief introductory meeting.

A party moving for summary judgment, in a case in which the opposing party will have the burden of proof at trial, is entitled to summary judgment "if he demonstrates, by reference to material described in Mass. R. Civ. P. 56 (c), unmet by countervailing materials, that the party opposing the motion has no reasonable expectation of proving an essential element of that party's case." Kourouvacilis v. General Motors Corp., 410 Mass. 706, 716 (1991).

In accordance with Rule 56, summary judgment must be granted to the moving party where there is no genuine issue of material fact and where the party is entitled to judgment as a matter of law. One of the principal purposes of the summary judgment rule "is to isolate and dispose of factually unsupported

claims or defenses . . . it should be interpreted in a way that allows it to accomplish this purpose." Kourouvacilis, 410 Mass. at 716 (quoting Celotex Corp. v. Catrett, 477 U.S. 317, 323-24 (1986)).

Since Ingoldsby has admitted that M.H.C.S. was notified of the contractual liability exclusion at issue in this case, there are no material facts in dispute with regard to Ingoldsby's claim against I.I.G. As a matter of law, I.I.G. met their duty of care as the insurance broker for M.H.C.S. Ingoldsby will not be able to produce any evidence to support his claims against I.I.G. for violation of M.G.L. c. 93A/176D (Count III), Fraud/Deceit (Count IV) and Negligent Misrepresentation (Count V).

**A. INGOLDSBY IS NO LONGER CLAIMING THAT HE WAS NOT AWARE OF THE CONTRACTUAL LIABILITY EXCLUSION**

By his own admission, Ingoldsby has abandoned the allegation that I.I.G. did not advise M.H.C.S. of the existence of the contractual liability exclusion. Ingoldsby previously alleged in his Complaint, as well as his September 18, 2006 affidavit, that the July 31, 2001 fax from I.I.G. to M.H.C.S. did not include the page with Amended Exclusion 4(h) (the contractual liability exclusion). This allegation formed the basis of the three Counts against I.I.G. contained in Ingoldsby's Amended Complaint.

Ingoldsby alleged that M.H.C.S. did not receive notice of the contractual liability exclusion despite several facts which proved this allegation to be

incorrect. Most notably, the fax confirmation sheet for the 7-31-01 letter from I.I.G. to M.H.C.S. (attached as the last page to **Exhibit A**) shows that eleven (11) pages were transmitted on 7-31-01. (Which is the total number of pages which were faxed to M.H.C.S. by I.I.G.) This evidence, in and of itself, showed that M.H.C.S. did in fact receive every page of this fax, including the page containing the contractual liability exclusion. Moreover, the entire policy, including the subject exclusion, was forwarded to M.H.C.S. on two subsequent occasions, on 1-04-02 and again on 1-21-02. Finally, the policy for the prior year contained an identical exclusion relative to contractual liability.

Nevertheless, Ingoldsby has now confirmed that although he previously believed this allegation to be true, he now knows that the information regarding the For-Profit Health Care Organization Amendatory Endorsements, including the Amendments to Exclusions, was in fact contained in the 7-31-01 letter from I.I.G. to M.H.C.S. It appears that his mistake was based upon the fact that said Amendments to Exclusions may have been omitted when M.H.C.S. forwarded the 7-31-01 letter to Ingoldsby. Since Ingoldsby admits that I.I.G.'s 7-31-01 letter did in fact contain all of the information about the Amendments to Exclusions, including the contractual liability exclusion, Ingoldsby will not be able to prove fraud/deceit or negligent misrepresentation against I.I.G.

**B. I.I.G. DID NOT HAVE A DUTY TO ADVISE INGOLDSBY WITH RESPECT TO INSURANCE COVERAGE.**

Insurance agents owe a duty to proceed in accordance with their customers' instructions. Rayden Engineering Corp. v. Church, 337 Mass. 652, 660 (1958). The agent must use "reasonable skill and ordinary diligence" in carrying out these instructions. Hartford Nat'l Bank & Trust Co. v. United Truck Leasing Corp., 24 Mass. App. Ct. 626, 630, *review denied*, 400 Mass. 1106 (1987). This duty does not require the agent to ensure that the customer understands the terms of the insurance agreement. Baldwin Crane & Equipment Corp. v. Riley & Riley Insurance Agency, Inc., 44 Mass. App. Ct. 29, 32 (1997) (insurance agent had no duty to ensure that insured understood the meaning of "minimum premium" as set forth in the policy).

As a general rule, an insurance agent has no duty to investigate a customer's need for insurance coverage or to advise the customer about the availability of insurance products to meet his or her particular needs. On the contrary, the customary relationship between an insurance agent and the customer is that of vendor and vendee:

Ordinarily, of course, an insurance agent assumes only those duties normally found in any agency relationship, including the obligation to deal with his principal in good faith and to carry out instructions, and he assumes no duty to advise merely by such a relationship.

16 A.J. APPLEMAN, INSURANCE LAW AND PRACTICE § 8836, at 64 (1981).



This is the rule of law adopted by the Appeals Court of Massachusetts. Robinson v. Charles A. Flynn Insurance Agency, Inc., 39 Mass. App. Ct. 902-903 (1995). In Robinson, plaintiffs alleged that their insurance agent owed a general duty “to inform and advise them as to the availability of uninsured and underinsured motor vehicle coverage up to the limits of the bodily injury liability coverage the clients carried.” In affirming the trial court’s award of a directed verdict in favor of the agent, the Appeals Court held that “[s]uch a sweeping duty finds no support” in Massachusetts law, absent “special circumstances of reliance.” Id. at 902-903. Further confirming its position on agent liability, the Appeals Court expressly stated that the relationship between an insurance broker and the insured is not fiduciary in nature. Baldwin Crane & Equipment Corp. v. Riley & Riley Insurance Agency, Inc., 44 Mass. App. Ct. 29, 31-32 (1997).

As a matter of law, I.I.G. did not have the broad duty to advise M.H.C.S. as to the appropriate coverage to carry simply because I.I.G. acted as their insurance broker. Further, they had no duty to advise Ingoldsby as they had no relationship with him at all. Ingoldsby would have to prove that there were “special circumstances” of “assertion, representation and reliance” between himself and I.I.G., which created a heightened duty to advise on the part of the broker. Based upon the evidence presented, Ingoldsby cannot possibly sustain that burden.

An insurance agent may be held liable for negligence in failing to properly advise his customer if the agent specifically undertakes to render such advice, or

where there are “special circumstances of assertion, representation and reliance” between the agent and the customer. See Bicknell, Inc. v. Havlin, 9 Mass. App. Ct. 497, 500-01 (1980); See also Rapp v. Lester L. Burdick, Inc., 336 Mass. 438, 442 (1957), quoted with approval in McCue v. Prudential Ins. Co. of America, 371 Mass. 659, 661 (1976). There are no such “special circumstances” presented in this case. Ingoldsby cannot, in good faith, seriously contend that he or his company was relying on I.I.G. to give him advice as to the appropriate coverage to purchase, or that there were otherwise “special circumstances of assertion, representation and reliance.”

### CONCLUSION

Since Ingoldsby has admitted that I.I.G. did in fact notify M.H.C.S. of the contractual liability exclusion, the plaintiff cannot establish that I.I.G. was negligent in failing to advise M.H.C.S. of the exclusion. Even if Ingoldsby had not made this recent admission, the evidence overwhelmingly proves that M.H.C.S. was informed of the exclusion several times. I.I.G. submits that they have no liability to Ingoldsby, under any of the claims in his Complaint or any other theory that he could conceivably plead. For all of these reasons, I.I.G. respectfully requests that the Court allow their Motion for Summary Judgment.

Respectfully submitted,

INTERNATIONAL INSURANCE  
GROUP, LTD., Defendant  
By their Attorneys:

/s/ Syd A. Saloman  
Syd A. Saloman - BBO #645267  
TUCKER, HEIFETZ & SALTZMAN, LLP  
100 Franklin Street, Suite 801  
Boston, MA 02110  
617-557-9696

# EXHIBIT A

HP LASERJET 3150  
 PRINTER/FAX/COPIER/SCANNER

JD CONFIRMATION REPORT FOR  
 INTERNATIONAL INSURANCE GROUP  
 617-951-3940  
 JUL-31-01 11:47AM

JOB	START TIME	USAGE	PHONE NUMBER/ADDRESS	TYPE	PAGES	MODE	STATUS
409	7/31 11:44AM	2'44"	17817402203	SEND.....	11/11	EC144	COMPLETED.....
TOTAL		2'44"	PAGES SENT: 11	PAGES PRINTED: 0			

125 Broad Street, 4<sup>th</sup> Fl.  
 Boston, MA 02110  
 Tel 617-951-3939 x133  
 Fax 617-951-3940

**InterNational  
 Insurance  
 Group, Ltd.**

# Fax

To: Pam Jones  
 Managed Health Care Systems

From: Nicholas F. Sciotto, AU, ARM, AJS  
 Director of Account Service

Pages: Cover + 10

Fax: 781-740-2203  
 Date: July 31, 2001

Re: D&O - EPL Renewal  
 CC:

☐ Urgent    ☒ For Review    ☐ Please Comment    ☐ Please Reply    ☐ Please Recycle

Let me know if you have any questions. Presumably, you will add this premium to the current PAC finance agreement. We will probably have to execute another Bankruptcy form as we did with the Package Policy.

125 Broad Street, 4<sup>th</sup> Fl.  
Boston, MA 02110  
Tel 617-951-3939 x133  
Fax 617-951-3940

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# FAXED

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July 27, 2001

Nicholas F. Sciotto  
International Insurance Group, LTD  
125 Broad Street  
4<sup>th</sup> Floor  
Boston, MA 02110

RE: **Managed Health Care Systems  
Directors and Officers Liability Insurance including Employment Practices  
Liability (EPL)  
August 4, 2001**

Dear Nicolas:

On behalf of National Union, a member of the American International Group, Inc., we are pleased to provide you with a renewal quote for the above captioned account. The current marketplace for Directors and Officers Liability Insurance is becoming more restrictive in coverage, pricing and retentions are increasing at renewals as well as for new business. The healthcare marketplace in particular is experiencing these "hard" market trends of volatile premiums and restrictive terms and conditions. It is not uncommon to see premium increases of 10% for stellar risks, to increases of 50% for risks with unenviable balance sheets. This trend follows a decade of decreasing premiums, lowered retentions, broadening terms and conditions – traits of the "soft" market. Managed Health Care Systems has filed for Chapter 11 bankruptcy since the last renewal, as well, the financial condition remains poor, albeit improving slightly. Through active negotiations with National Union, we were able to obtain a renewal proposal with a 17% increase, a remarkably reasonable increase given the dynamics since last renewal.

Additionally, for 2001 AIG has mandated that a revised Health Care Amendatory endorsement be placed ***on all Health Care risks***. We have ensured that there are no exceptions. This endorsement differs from the expiring endorsement for Managed Health Care Systems. The new revised endorsement includes an enhancement for IRS Fines and Penalties coverage. This is in addition to the expiring enhancements such as an amended Insured Person definition to include Peer Review/Credentialing, independent contractors, department heads; EMTALA coverage; and Government Funding Defense Costs. The limitations this endorsement introduces this renewal are: a sub limit on EMTALA coverage of \$150,000; *failure to maintain insurance exclusion*; *"antitrust, price fixing, price discrimination, unfair competition, deceptive trade practices and/or monopolies, including any actions, proceedings, claims or investigations relating thereto"* exclusion; human clinical trials exclusion; and pre-authorized defense attorneys "panel counsel" for

all claims - last year panel counsel was required for Securities claims only. Finally, there are language changes with the new endorsement, however; the coverage essentially remains the same.

Lastly, at renewal AIG has added a limited private placement coverage endorsement that adds an exclusion for "public or private offering of securities by the Company..." however, the exclusion carves back coverage for private offerings of securities if less than or equal to \$15,000,000.

After you have had an opportunity to review, please call with any questions.

Regards,

Thomas J. McGraw



## National Union Renewal Proposal

<b>INSURER:</b>	National Union Fire Insurance Company of Pittsburgh, PA Admitted Carrier / A++ A.M. Best "Superior"
<b>POLICY FORM:</b>	Private Edge
<b>COVERAGE:</b>	Corporate Liability Policy including Directors and Officers Liability Insurance and Employment Practices Liability Coverage
<b>POLICY TERM:</b>	August 4, 2001 to August 4, 2002
<b>LIMITS OF LIABILITY<sup>1</sup>:</b>	\$3,000,000
<b>RETENTIONS:</b>	\$35,000 each Claim for Employment Practices Liability; \$150,000 each Claim for Securities Claims (other than Private Placements); \$25,000 All other Claims (including Private Placements).
<b>PREMIUM:</b>	\$24,995
<b>DISCOVERY:</b>	One year optional discovery period will be available for 75% of the annual premium. <i>24995 = 1506</i>
<b>RETROACTIVE DATE:</b>	Date of Incorporation

**Endorsements to be added in addition to the base policy:**

1. Outside Entity Coverage;
2. Captive Insurance Company;
3. Commissions Exclusions;
4. Nuclear Energy Liability Exclusion Endorsement (Broad Form);
5. Specific Investigation/Claim/Litigation/Event – same as expiring;
6. Final Determination Wording.

**Endorsement added at renewal:**

1. For-Profit Health Care Organization Extension –2001 Version. This endorsement is mandatory by National Union/AIG on all health care risks. This endorsement replaces the Health Care Extension, Endorsement No. 5 on the expiring program. Please read this endorsement carefully;

<sup>1</sup> Limit of Liability applies each Claim or related Claims and in the policy aggregate (inclusive of defense expenses).

2. Auto Private Placement Coverage threshold limited to \$15M in proceeds. This endorsement limits Private Placements to \$15M for automatic coverage and is included in coverage for no additional premium.

Lastly, no additional limits of liability are available from AIG.

**Subjectivities:**

*The quotation is subject to receipt, review and acceptance prior to binding of the following:*

1. Board of Directors;
2. Most recent audited financials;
3. Confirmation of a business plan in place to maintain operations.

**FOR-PROFIT HEALTH CARE ORGANIZATION  
AMENDATORY ENDORSEMENT**

In consideration of the premium charged, it is hereby understood and agreed that this policy is amended as follows:

**I. AMENDMENTS TO DEFINITIONS**

- A. The Definition of Individual Insured(s) shall be amended to include the following at the end thereof:

Individual Insureds shall also include any past, present or future member of any duly constituted committee ("Committee Member"); any individual person engaged by a duly constituted committee for purposes of providing an expert opinion with regard to peer review or credentialing decision concerning an individual physician ("Outside Expert"); any individual in charge of any operational department ("Department Head") or any medical director, staff physician or faculty member of the Company, regardless of whether or not such person is directly employed by the Company or is considered to be an independent contractor.

- B. The Definition of Loss shall be amended to include the following at the end thereof:

**1. IRS FINES**

Loss shall include Defense Costs incurred in connection with a Claim seeking an assessment of taxes, initial taxes, additional taxes, tax deficiencies, excise taxes or penalties pursuant to the following sections of the Internal Revenue Code of 1986 (as amended):

Section 4911 (tax on excess expenditures to influence legislation);  
Section 4940 (a);  
Section 4941 (taxes on self-dealing);  
Section 4942 (taxes on failure to distribute income);  
Section 4943 (taxes on excess business holding);  
Section 4944 (taxes on investments which jeopardize charitable purpose);  
Section 4945 (taxes on taxable expenditures);  
Section 6652 (c) (1) (A) and (B) (penalties for failure to file certain information returns or registration statements);  
Section 6655 (a) (1) (penalties for failure to pay estimated income tax); and  
Section 6656 (a) and (b) (penalties for failure to make deposit of taxes).

**2. EMTALA COVERAGE**

- a. The definition of Claim(s) is amended to include the following: Claim shall also mean a civil lawsuit alleging a violation pursuant to the Emergency Medical Treatment and Active Labor Act ("EMTALA"), 42 U.S.C., 1396dd *et seq.*, and any similar state or local statute (herein "EMTALA Claim(s)").
- b. The Definition of Loss is amended to include coverage for civil fines and penalties assessed pursuant to an EMTALA Claim.
- c. It is further understood that a sublimit of liability in the amount of \$150,000 shall apply to all EMTALA Claims made and reported during the Policy Period or Discovery Period (if applicable) combined (hereinafter "Sublimit of Liability"). This Sub-Limit of Liability shall be part of and not in addition to the aggregate Limit of Liability stated in the Item of the Declarations entitled Limit of Liability.
- d. Solely for the purposes of the coverage afforded herein to EMTALA Claims, exclusion (I) is modified by deleting the phrase "alleging, arising out of, based upon or attributable to" and replacing it with the word "for".

### 3. GOVERNMENTAL FUNDING DEFENSE COST COVERAGE

Loss shall not include the return of funds which were received from any federal, state or local governmental agency and any interest, fines or penalties arising out of the return of such funds; provided, however, that with regard to Claims for Wrongful Acts arising out of the return, or request to return such funds, this policy shall pay Defense Costs up to an amount not to exceed \$1,000,000 ("Government Funding Defense Costs Sublimit"). This Sub-Limit of Liability shall be part of and not in addition to the aggregate Limit of Liability stated in the Item of the Declarations entitled Limit of Liability. With respect to any Defense Costs coverage afforded pursuant to this paragraph 3, it is understood that: the Insurer shall be liable to pay 50% of such Defense Costs, excess of a retention in the amount of \$1,000,000, up to the Government Funding Defense Costs Sublimit, and subject to the Limit of Liability listed on the Declarations Page. It being a condition of this insurance that the remaining 50% of such Defense Costs shall be carried by the Insureds at their own risk and be uninsured.

It is further understood and agreed that solely with respect to the Governmental Funding Defense Cost coverage provided pursuant to the above paragraph, the No Liability retention waivers located in the section of the policy entitled RETENTION CLAUSE are deleted in their entirety.

- C. The Definition of Wrongful Act is amended to include the following at the end thereof:

With respect to all Insureds, any alleged defect in peer review or credentialling.

## II. AMENDMENTS TO EXCLUSIONS

### 1. Exclusions 4 (h) is deleted in its entirety and replaced with the following:

(h) alleging, arising out of, based upon or attributable to any actual or alleged contractual liability of the Company or an Insured under any express (written or oral) contract or agreement (including, but not limited to, any liquidated damages, severance agreement or payment, golden parachute agreement, or any compensation agreement payable upon the termination of any Insured); provided, however, that this exclusion shall not apply to:

(1) Employment Practices Claims to the extent that any liability does not arise from such express contract or agreement; or

(2) Claims for Loss alleging Wrongful Acts of an Insured(s) with respect to hospital practice, privileges, credentialling or peer review matters.

### 2. The following additional exclusions are added to the end of Clause 4. EXCLUSIONS:

(r) alleging, arising out of, based upon or attributable to any failure or omission on the part of the Insureds or the Company to effect and maintain insurance;

(s) alleging, arising out of, based upon or attributable to, or in any way involving, either directly or indirectly, antitrust violations, price fixing, price discriminations, unfair competition, deceptive trade practices and/or monopolies, including any actions, proceedings, claims or investigations related thereto;

(t) alleging, arising out of, based upon or attributable to the Insureds performance or rendering of or failure to perform or render medical or other professional services or treatments for others; provided, however, that this exclusion shall not apply to:

(1) Employment Practices Claims;

(2) Claims for Loss alleging Wrongful Acts of an Insured(s) peer review or credentialling processes;

(u) alleging, arising out of, based upon or attributable to any Human Clinical Trial. For purposes of this exclusion (u), "Human Clinical Trial" shall mean any study utilizing humans to provide clinical data for the assessment of a medical treatment, procedure or pharmaceutical.

III. AMENDED CLAUSE 9

Clause 9 is deleted in its entirety and replaced with the following:

9. PRE-AUTHORIZED DEFENSE ATTORNEYS FOR ALL CLAIMS

This Clause 9 applies to all Claims.

Affixed as Appendix A hereto and made a part of this policy is a list or lists of Panel Counsel law firms ("Panel Counsel Firms") from which a selection of legal counsel shall be made to conduct the defense of all Claims against an Insured pursuant to the terms set forth below.

In the event the Insurer has assumed the defense pursuant to Clause 8 of this policy, then the Insurer shall select a Panel Counsel Firm to defend the Insureds. In the event the Insureds are already defending a Claim, then the Insureds shall select a Panel Counsel Firm to defend the Insureds.

The selection of the Panel Counsel Firm, whether done by the Insurer or the Insureds, shall be from the list of Panel Counsel Firms designated for the type of Claim and be from the jurisdiction in which the Claim is brought. In the event a Claim is brought in a jurisdiction not included on the appropriate list, the selection shall be made from a listed jurisdiction which is the nearest geographic jurisdiction to either where the Claim is maintained or where the corporate headquarters or state of formation of the Named Entity is located. In such instance, however, the Insurer shall, at the written request of the Named Entity, assign a non-Panel Counsel Firm of the Insurer's choice in the jurisdiction in which the Claim is brought to function as "local counsel" on the Claim to assist the Panel Counsel Firm which will function as "lead counsel" in conducting the defense of the Claim.

With the express prior written consent of the Insurer, an Insured may select (in the case of the Insured defending the Claim), or cause the Insurer to select (in the case of the Insurer defending the Claim), a Panel Counsel Firm different from that selected by other Insured defendants if such selection is required due to an actual conflict of interest or is otherwise reasonably justifiable.

The list of Panel Counsel Firms may be amended from time to time by the Insurer. However, no change shall be made to the specific list attached to this policy during the Policy Period without the consent of the Named Entity.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

EXCLUSION J AMENDED  
(LIMITED PRIVATE PLACEMENT COVERAGE)

In consideration of the premium charged herein it is understood and agreed that Clause 4. EXCLUSIONS, is hereby amended by deleting Exclusion (j) in its entirety and replacing it with the following:

- (j) alleging, arising out of, based upon or attributable to any public or private offering of securities by the Company, an Outside Entity or an Affiliate or alleging a purchase or sale of such securities subsequent to such offering;

provided, however, that this exclusion will not apply to:

- (1) any purchase or sale of securities exempted pursuant to section 3(b) of the Securities Act of 1933. Coverage for such purchase or sale transaction shall not be conditioned upon payment of any additional premium; however, the Named Entity shall give the Insurer written notice of any public offering exempted pursuant to section 3(b), together with full particulars and as soon as practicable, but not later than 30 days after the effective date of the public offering;
- (2) to any private offering of securities if such private offering is less than or equal to ~~\$xxxxxx~~ in proceeds; coverage for such private offering shall not be conditioned upon payment of any additional premium; however, the Named Entity shall give the Insurer written notice of any such private offering together with full particulars and as soon as practicable, but not later than 30 days after the effective date of such private offering;
- (3) to any offering of securities (other than a public offering described in paragraph (1) above or a private offering described in paragraph (2) above), as well as any purchase or sale of such securities subsequent to such offering, in the event that within 30 days prior to the effective time of such offering: (i) the Named Entity shall give the Insurer written notice of such offering together with full particulars and underwriting information required thereto; and (ii) the Named Entity accepts such terms, conditions and additional premium required by the Insurer for such coverage. Such



coverage is also subject to the Named Entity paying when due any such additional premium. In the event the Named Entity gives written notice with full particulars and underwriting information pursuant to (i) above, then the Insurer must offer a quote for coverage under this paragraph;

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.



## EXHIBIT B

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

GE HFS HOLDINGS, INC.  
*Formerly known as*  
HELLER HEALTHCARE FINANCE,  
INC.,

Plaintiff,

and

MICHAEL INGOLDSBY,

Intervenor/Plaintiff,

v.

NATIONAL UNION FIRE INSURANCE  
COMPANY OF PITTSBURGH, PA, and  
INTERNATIONAL INSURANCE  
GROUP, LTD.,

Defendants.

CIVIL ACTION No: 05-CV-11128-NG

**AFFIDAVIT OF MICHAEL INGOLDSBY**

---

I, Michael Ingoldsby, being duly sworn, depose and state as follows:

1. I am an individual with a residence at 1863 San Silvestro Drive, Venice, Florida, 34285.
2. At all times relevant hereto, I was the Chairman of the Board of Managed Health Care Systems, Inc. ("MHCS"), which was a corporation duly organized and existing under the laws of the Commonwealth of Massachusetts and had its principal place of business at 175 Derby Street, Hingham, Massachusetts.
3. As Chairman of the Board, I was not involved in the day-to-day operations of

MHCS. In fact, I had not been involved in the operations of MHCS since 1999 due to a medical condition which disabled me. Since 1999, I have been collecting under a disability policy and have not been involved in the day-to-day operations of MHCS.

4. As such, I was not involved in the preparation of the borrowing base certificates submitted to Heller in connection with the DIP Loan.

5. In addition, I did not personally do business with Defendants IIG or National Union and was not directly involved with the procurement of insurance coverage.

6. At all times material hereto, I was insured for liability under a Directors and Officers Policy of Insurance and Company Reimbursement Policy, issued by National Union Fire Insurance Company of Pittsburgh, PA to Managed Health Care Systems, Inc., being policy number 873-57-52, effective August 4, 2001, through August 4, 2002, which was a renewal of policy number 473-16-30 (hereinafter collectively referred to as the "Policy").

7. On or about August 4, 2000, MHCS purchased the Policy issued by National Union, using International Insurance Group, Inc. ("IIG") as its insurance broker.

8. The Policy came up for renewal on August 4, 2001.

9. On or about July 31, 2001, IIG provided MHCS with National Union's Renewal Proposal (the "Proposal") which detailed, among other items, endorsements to be added to the base policy.

10. The Policy provided by IIG did not include a copy of Endorsement No. 8, which amended Exclusion 4(h) and, in doing so, limited coverage related to claims arising from contractual liability. In addition, the copy of the Policy I received was not bound.

11. Further, as an insured, I was never advised of the inclusion of Endorsement No. 8, which amended Exclusion 4(h), or its implications on the coverage provided by the Policy.

12. On or about August 1, 2002, Heller Healthcare Finance, Inc. ("Heller") commenced a civil action in United States District Court for the District of Massachusetts, Civil Action No. 02CV11553 NG (the "Heller Action") against me and subsequently served the "Complaint and Jury Demand," a true and correct copy of which is attached hereto as *Exhibit A*.

13. The Heller Complaint alleged claims against me for Negligent Misrepresentation (Count I) and Breach of Guaranty (Count II).

14. On August 2, 2002, the "Complaint and Jury Demand" was forwarded to the Defendant, National Union.

15. On or about October 11, 2002, the insurer, through counsel, "declined coverage for the *Heller Action* allegations against Michael Ingoldsby, Mary Lee Ingoldsby, and Indy Edwards." A true and correct copy of the October 11, 2002 denial letter is attached hereto as *Exhibit B*.

16. Because National Union and IIG failed to adequately disclose Endorsement No. 8 and its amendment of Exclusion 4(h), I had no knowledge of Endorsement No. 8 or Exclusion 4(h) prior to National Union's denial of my claim. More importantly, I had no knowledge of the effect of said endorsement in limiting coverage under the Policy.

17. Thereafter, by letter dated March 6, 2003, counsel for National Union again declined coverage by stating that "there [was] no coverage available under the policy for the claims asserted in the *Heller* action against Michael O. Ingoldsby." A true and

correct copy of the March 6, 2003 denial letter is attached hereto as *Exhibit C*.

18. By way of letter from counsel, dated March 17, 2004, I made a formal demand to National Union under Mass. Gen. Laws Ch. 93A. National Union again declined coverage by way of letter from counsel, dated April 16, 2004, and, in doing so, again relied upon Exclusion 4(h), as amended by Endorsement No. 8.

19. Because National Union denied my claim under the Policy, I bore the cost of my defense of the Heller Action.

20. In litigating the claims asserted by Heller over a two-year period, I expended a substantial amount of money in attorneys' fees and costs. Specifically, I incurred legal fees related to the Heller Action in the amount of Nineteen Thousand Three Hundred Ninety Six Dollars and 24/100 (\$19,396.24).

21. As a result thereof, on or about December 13, 2002, I filed a petition for relief pursuant to Chapter 7 of the United States Bankruptcy Code in the United States Bankruptcy Court, Middle District of Florida, Tampa Division, case number 02-24824-8C7 (the "Bankruptcy").

22. National Union was not a creditor in the Bankruptcy.

23. On or about January 2, 2003, I filed my Schedules and Statement of Financial Affairs.

24. In my Statement of Financial Affairs, I disclosed that I was a defendant in the Heller Action.

25. At that time, I had not contemplated a claim for reimbursement and/or indemnification against National Union because I had not yet incurred any substantial legal fees or suffered any damages. Therefore, I did not list it on my Schedules and

Statement of Financial Affairs.

26. On or about April 18, 2003, I filed an Amended Schedule and Statement of Affairs.

27. At this time, I was still not aware of any potential claim against National Union.

28. On or about July 13, 2003, Heller was granted relief from automatic stay in my bankruptcy case. As such, the case began to proceed and I began to accumulate significant legal fees related thereto.

29. On or about March 17, 2004, I made a formal demand upon National Union, via counsel, for reimbursement of my defense costs in the Heller Action.

30. On or about April 16, 2004, National Union, via counsel, responded to my formal demand letter and again denied coverage.

31. Once it became clear that National Union was not going to reimburse me for the defense costs of the Heller Action, the Bankruptcy trustee was notified that I had a potential claim against National Union related to the reimbursement of said defense costs.

32. I also discussed the potential claim against National Union with my bankruptcy counsel who advised me that I did not need to amend my Statement of Financial Affairs to reflect a potential claim for post-petition expenses.

33. As such, I did not omit my claim against National Union from my Statement of Financial Affairs with the intention of defrauding the court or my creditors.

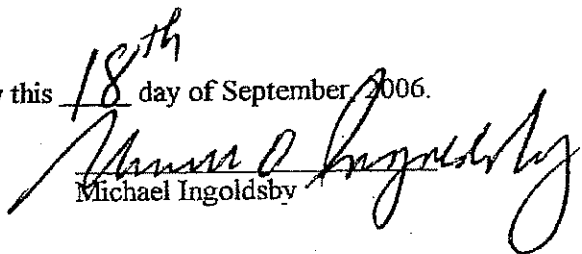
34. On or about February 7, 2004, I entered into a Settlement Agreement with Heller. Pursuant to the Settlement Agreement with Heller, I submitted payment to Heller in the amount of One Hundred Twelve Thousand Seven Hundred Sixty Three Dollars and 71/100 (\$112,763.71). I also incurred legal fees related to the Heller Action in the

amount of Nineteen Thousand Three Hundred Ninety Six Dollars and 24/100 (\$19,396.24).

35. I subsequently expended Two Hundred Fifty Thousand Dollars (\$250,000.00) to settle the bankruptcy case and expended an additional One Hundred Thousand Seven Hundred Twenty One Dollars (\$100,721.00) in legal fees.

36. In order to cover the costs of the bankruptcy settlement, I was forced to sell my residence in Osprey, Florida, for below market price, resulting in a total loss of Five Hundred Thirty Six Thousand Six Hundred Eighty Eight Dollars (\$536,688.00). I was also forced to refinance the mortgage on my residence located in Hingham, Massachusetts, increasing my indebtedness by Two Hundred Fifty Thousand Dollars (\$250,000.00).

Signed under the pains and penalties of perjury this 18<sup>th</sup> day of September, 2006.

  
Michael Ingoldsby

## EXHIBIT C



Volume 1  
Pages 1-101  
Exhibits per index

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS  
Civil Action No. 05-CV-11128-NG

-----  
GE MFS Holdings, Inc. :  
Formerly Known As :  
Heller Healthcare Finance, Inc., :  
Plaintiff :  
and :  
Michael Ingoldsbey, :  
Intervenor/Plaintiff :  
vs :  
National Union Fire Insurance :  
Company of Pittsburgh, Pennsylvania :  
and International Insurance Group, LTD, :  
Defendants :  
-----

DEPOSITION OF MICHAEL INGOLDSBY, a  
witness called on behalf of the Defendant, taken  
pursuant to the Federal Rules of Civil Procedure, before  
Patricia M. Haynes, a Certified Shorthand Reporter and  
Notary Public in and for the Commonwealth of  
Massachusetts, CSR No.: 14620F, at the Offices of  
Edwards, Angell, Palmer & Dodge, LLP, 111 Huntington  
Avenue, Boston, Massachusetts, on Friday, October 20,  
2006, commencing at 10:00 a.m.

COPELEY COURT REPORTING  
58 Batterymarch Street, Suite 117  
Boston, Massachusetts 02110  
(617) 423-5841

# I N D E X

Witness Direct Cross Redirect Recross  
MICHAEL INGOLDSBY

(By Mr. Tumilty) 4

# E X H I B I T S

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## APPEARANCES:

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Boston, Massachusetts 02199  
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Tucker, Heifetz & Saltzman, LLP  
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Boston, Massachusetts 02110

## P R O C E E D I N G S

MICHAEL INBGOLDSBY,

having been previously sworn, was examined and testified  
as follows:

DIRECT EXAMINATION BY MR. TUMILTY:

Q. My name is John Tumilty. I'm one of the  
attorneys here that's representing National Union in the  
case in which we are here for your deposition today.  
I'm going to be asking you a series of questions today.

I need you to give audible responses because  
the court reporter can't take down nods of the head or  
shrugs of the shoulders. Do you understand that?

A. Yes.

Q. If you don't understand a question, I don't  
want you to guess or speculate. If you don't understand  
a question, just tell me and I'll try to rephrase it and  
do whatever I can to help you understand it or ask a  
different question.

A. Yes.

Q. Are you on any medications that would affect  
your ability to answer questions here today?

A. I don't believe so. I'm on a lot of  
medications. I take medication for memory related  
disorders. I guess to that extent there would be some

1 things I'm just not going to be able to remember.

2 Q. What medication is that that you take for the  
3 memory related disorder.

A. **There's two of them, Namenda and Exelon.**

4 Q. Have you been diagnosed as having a memory  
5 disorder?

6 A. Yes.

7 Q. Does that disorder have a name?

8 A. Well, they call it frontal lobe dementia.

9 They really don't know whether it's Alzheimer's yet, but  
10 they are monitoring it at Brigham and Women's.

11 Q. You're not a doctor, correct?

12 A. No.

13 Q. I understand you're not a doctor, but do you  
14 know if the memory related disorder that you have, does  
15 it affect your short-term memory or long-term memory or  
16 both?

17 A. **I mean, I can't answer technically.**

18 Q. I understand.

19 A. **I most definitely have short-term and some  
20 long-term.**

21 Q. What is the name of the doctor at Brigham and  
22 Women's that is treating you for this?

23 A. **Christopher Wright. He's in the memories**

1 disorders unit.

2 Q. In order to speed things up a little today, I  
3 would like to use some shorthand terms. I want to agree  
4 on them so we are clear as to what we are talking about.

5 If I'm talking about National Union, can we  
6 agree I'm talking about the National Union Insurance  
7 Company that provided insurance to you and MHCS?

8 A. **Okay.**

9 Q. And if I talk about MHCS, can we agree that  
10 I'm referring to Managed Healthcare Systems?

11 A. **Yes.**

12 Q. And if I talk about IIG, do you understand  
13 that to mean International Insurance Group?

14 A. **Okay.**

15 Q. If I talk about Heller, can we understand that  
16 that means Heller Healthcare Finance, Inc.?

17 A. **Okay.**

18 Q. If I talk about the policy, can we agree that  
19 I'm referring to policy No. 8738752 which was effective  
August 4, '01 to August 4, '02?

20 A. **Is that the one that was the directors and  
21 officers policy?**

22 Q. Yes.

23 A. **Yes.**

1 Q. But it was specifically for the year from

2 August of '01 to August of '02.

3 A. **I don't know if that's the case. I mean, I  
4 understand that's what you're referring to.**

5 Q. That's all I mean, that that defined term is  
6 something for purposes of the deposition.

7 MR. ACETO: Yes.

8 BY MR. TUMILTY:

9 Q. Have you ever been deposed before?

10 A. Yes.

11 Q. How many times?

12 A. **Four or five.**

13 Q. What type of cases were you deposed in?

14 A. **There was a case that was an unfair  
15 termination of an employee of that company.**

16 Q. That company being MHCS?

17 A. **Yes.**

18 Q. Go ahead.

19 A. **I was in business for years, so I've been  
20 deposed a number of times.**

21 Q. Were you personally named as a party in any of  
22 those cases?

23 A. **Yes.**

24 Q. What type of case were you personally named as

1 a party in?

2 A. **It was a termination case, employment related  
3 termination case.**

4 Q. To the best of your memory, were you ever  
5 named as a party to any of the other lawsuits in which  
6 you were deposed?

7 A. **I think so. I just don't remember.**

8 Q. You told me one of those suits was a  
9 termination case. Do you remember the general nature of  
10 any of the other suits?

11 A. **Well, that termination case was based on a  
12 sexual harassment claim. There were other employment  
13 related suits that came out of Managed Healthcare. I  
14 just can't think of any other lawsuits right now.**

15 Q. The lawsuits that you do remember and you were  
16 referring to, were those here in Massachusetts?

17 A. **Yes.**

18 Q. Do you remember whether they were in state  
19 court or federal court?

20 A. **State court. I think we did have, I wasn't a  
21 defendant but we did have one case that was with a  
22 company that was in federal court.**

23 MR. ACETO: You personally.

24 BY MR. TUMILTY:

1 A. Oh, no.

2 Q. In any of the lawsuits that you were  
3 personally named, were you named as a defendant?

A. Yes.

4 Q. And in any of those lawsuits in which you were  
5 personally named as a defendant, were you found liable?

6 A. Yes.

7 Q. In which case or cases were you found liable  
8 in?

9 A. Donald Foster.

10 Q. Was that a termination case?

11 A. That was the termination sexual harassment  
12 case.

13 Q. Is that the only case that you were personally  
14 found liable of to the best of your memory?

15 A. I think so. I mean, there may have been  
16 others. Things may have been settled and never, you  
17 know, went to court fully. I just don't recall anymore.

18 Q. Can you tell me what, if anything, you did to  
19 prepare for your deposition today?

20 A. Nothing.

21 Q. Did you review any documents?

22 A. No.

23 Q. Did you consult with anyone other than your  
24 attorney?

1 attorney?

2 A. No.

3 Q. Are you aware that you have produced documents  
4 in this litigation?

5 A. That I've produced them?

6 Q. Yes.

7 A. Yes.

8 Q. Or that they have been produced on your behalf  
9 by your attorney?

10 A. Yes.

11 Q. Were you involved in collecting those  
12 documents?

13 A. Yes.

14 Q. To turn over to your attorney?

15 A. Yes.

16 Q. Was anyone else involved in that process?

17 A. No.

18 Q. Can you tell me what you did in terms of  
19 collecting documents to turn over to your attorney?

20 A. I had a big box of items, and I took  
21 everything out of the box except the things that I knew  
22 he already had, which were court motions, and I just  
23 sent everything to him.

24 Q. Is that a big box that you keep at your house?

1 A. It was a banker's box.

2 Q. But is it located at your house, the banker's  
3 box, or is it somewhere else?

4 A. It's in a drawer right now. It's not even in  
5 the box right now, the remaining.

6 Q. The documents that were in the banker's box  
7 that are now in the drawer are at your house?

8 A. Yes.

9 Q. How did you know your attorney already had the  
10 items you took out of the box because he already had  
11 them?

12 A. Because all of the documents came from him.

13 MR. ACETO: He's referring to me. I  
14 represented him in the other case that he's talking  
15 about or the company and him. That's how he knows I had  
16 them.

17 BY MR. TUMILTY:

18 Q. Is MHCS still in business?

19 A. No.

20 Q. Do you know what happened to the corporate  
21 records and documents of MHCS after it went out of  
22 business?

23 A. No.

24 Q. If you had to locate those documents, do you

1 know who you would ask?

2 A. Well, I would go to the people that ended up  
3 taking over the company and start there.

4 Q. Who is that?

5 A. Overlook.

6 Q. Where is Overlook located?

7 A. They are in the same building where we used to  
8 be, but I don't know where. I think it's just a branch.

9 Q. Other than the documents that you say that you  
10 took out of the box because you knew your attorney  
11 already had them, do you recall finding any other  
12 documents that you didn't forward to your attorney?

13 A. No.

14 Q. Since you forwarded those documents to your  
15 attorney, have you found any additional documents or any  
16 new documents that you haven't sent to him?

17 A. No.

18 Q. Can you tell me where you currently reside?

19 A. I reside in Florida and Massachusetts.

20 Q. Do you own a home in Massachusetts?

21 A. No.

22 Q. What's your current address in Massachusetts?

23 A. 19 Blackrock Drive.

24 Q. Which town?

1 A. **Hingham.**

2 Q. What is your address in Florida?

3 A. **1863 San Sylvester Drive, Venice.**

Q. Do you own that property in Venice, Florida?

A. **No.**

6 Q. Do you currently work?

7 A. **No.**

8 Q. When was the last time you were employed?

9 A. **I don't know for sure, but it would be around**  
10 **between '98 and '99.**

11 Q. Other than bank interest or investment income,  
12 have you been paid in any fashion since '98 or '99 or  
13 earned income since that time?

14 A. **Earned income?**

15 Q. From a job or consulting or anything like  
16 that?

17 A. **No.**

18 Q. Are you currently out on disability?

19 A. **Yes.**

20 Q. Have you been out on disability since  
21 approximately 1999?

22 A. **Yes.**

23 Q. And can you tell me what the disability is  
24 that has caused you to no longer be employed?

1 A. **Well, the whole subject of my memory and some**  
2 **other functions that relate mostly to they call it**  
3 **executive function decision process, along with severe**  
4 **depression, has really caused me to be unable to do the**  
5 **things I used to be able to do.**

6 Q. I understand you're not a doctor and you're  
7 not a psychologist, but can you explain if you can what  
8 executive function decision process is or how would you  
9 describe it?

10 A. **All I know is that it relates to making**  
11 **decisions and processing data and speech, which most**  
12 **jobs require.**

13 Q. When were you diagnosed as having these  
14 things?

15 A. **At different times, but the memory piece was**  
16 **in the past three plus years.**

17 Q. Has any physician ever told you that any of  
18 the disabilities that you suffer affect your cognitive  
19 abilities or your ability to process information?

MR. ACETO: If you understand the  
question.

22 BY MR. TUMILTY:

23 A. **No one has ever used those words, but that's,**  
24 **I think that's another way of describing the executive**

1 function.

2 MR. ACETO: We didn't discuss it at the  
3 outset, but the usual stipulations, reserve all  
4 objections, except as to form, and motions to strike  
5 until the time of trial?

6 MR. TUMILTY: Yes.

7 MR. ACETO: 30 days to read and sign,  
8 waive the notary?

9 MR. TUMILTY: Yes.

10 BY MR. TUMILTY:

11 Q. Do any of your disabilities or medical  
12 conditions affect your eyesight?

13 A. **No.**

14 Q. Do any of your disabilities or medical  
15 conditions affect your ability to read?

16 A. **No.**

17 Q. Have you ever been arrested?

18 A. **No.**

19 Q. Ever been convicted of a crime?

20 A. **Of a criminal offense?**

21 Q. Yes.

22 A. **No.**

23 Q. Can you just tell me what your education has  
24 been since high school, where you went to college?

1 A. **Bachelor and master's degree, Saint Francis**  
2 **College in Pennsylvania.**

3 Q. What area of study?

4 A. **Human resource management and economics.**

5 Q. You graduated, correct?

6 A. **Yes.**

7 Q. And what year was that?

8 A. **'68.**

9 Q. Any additional formal schooling after college?

10 A. **Just the graduate degree.**

11 Q. At Saint Francis also?

12 A. **Yes, in '68.**

13 Q. Was MHCS the last place you were employed?

14 A. **Yes.**

15 Q. And can you tell me when you first became  
16 affiliated with MHCS?

17 A. **I started it sometime in the early '80s, maybe**  
18 **before, maybe '70s.**

19 Q. Did you form MHCS?

20 A. **Yes.**

21 Q. Did anyone else form it with you, did you have  
22 a partner or anything like that?

23 A. **Initially there were a couple of people, but I**  
24 **was the only one who provided the capital.**

1 Q. Can you tell me if you can remember and if you  
2 can go in chronological order what positions you held  
3 with MHCS?

4 A. **Well, I was really just a board member and**  
5 **stockholder for -- we started it around 1980, and I**  
6 **remained in that role until probably '92, somewhere**  
7 **around that period. And only around '92, '93 did I play**  
8 **an active role.**

9 But even that was not full time. I was not  
10 involved with the managing of the company at all in the  
11 period of '94 to the late '90s. I may be off on that.  
12 And I wasn't involved with any aspect of day-to-day  
13 activities from mid '98 forward.

14 Q. Any aspect at all from mid '98 forward?

15 A. **I had no responsibilities.**

16 Q. Leaving aside the issue of whether you  
17 actually had responsibilities, did you have any input  
18 into day-to-day operations of the company at any time  
19 from '98 forward?

20 A. **Not in terms of operations, no.**

21 Q. What input did you have with respect to MHCS  
22 from '98 forward?

23 A. **The only area that I had involvement in was**  
24 **making introductions for banking relationships. I had**

1 **no involvement with the aspects of the business and**  
2 **health care providing.**

3 MR. ACETO: I need to talk to him about an  
4 issue.

5 (Witness confers with counsel.)

6 BY MR. TUMILTY:

7 Q. Who would you say was responsible for the  
8 day-to-day operations at MHCS during 1998 and 1999?

9 A. **Indy Edwards.**

10 Q. Anyone else?

11 A. **Pam Jones was the controller.**

12 Q. Is it your belief that both of those people  
13 were responsible for the day-to-day operations of MHCS  
14 from 1999 until MHCS ceased to exist?

15 A. **Yes.**

16 Q. Were you ever employed by MHCS?

17 A. **Yes, but it was prior to '98.**

18 Q. When were you employed by MHCS?

19 A. **I don't know the exact dates. It would have**  
20 **been somewhere in the 92 or '93 or '97.**

21 MR. ACETO: I want to make sure the  
22 question is not whether he was a board officer or  
23 member.

24 MR. TUMILTY: Employed.

1 MR. ACETO: Getting a W-2?

2 MR. TUMILTY: Right.

3 BY MR. TUMILTY:

4 Q. In what position were you employed by MHCS?

5 A. **I guess I was the president.**

6 Q. When you say you guess you were the president,  
7 are you unsure of whether you were the president?

8 A. **Well, in '95 -- I know I wasn't in '95 and '96**  
9 **because that's when I had another person that was the**  
10 **president. It was probably '92 to '95 that I -- there**  
11 **was someone else that ultimately was terminated and I**  
12 **might have stepped in for a short period of time, but it**  
13 **wasn't, I wasn't in that role for any long period of**  
14 **time.**

15 Q. Do you know who the president of MHCS was in  
16 2000 and 2001?

17 A. **Indy Edwards.**

18 Q. Other than being the president of MHCS for  
19 some period of time, were you employed in any other  
20 capacity by MHCS?

21 A. **No, not that I recall?**

22 Q. You were a member of the board of MHCS?

23 A. **Yes.**

24 Q. For what period of time were you a member of

1 the board of MHCS?

2 A. **I think the entire time of existence.**

3 Q. Were you chairman of the board the entire time  
4 that MHCS existed?

5 A. **I believe so.**

6 Q. Do you remember how many people were generally  
7 on the board of MHCS?

8 A. **I think it was three.**

9 Q. Can you tell me who else was on the board of  
10 MHCS besides yourself?

11 A. **Myself, my wife and one other member. The**  
12 **other member changed from time to time.**

13 Q. And you mentioned that you were also a  
14 stockholder of MHCS. Were you a stockholder of MHCS  
15 during its entire period of existence?

16 A. **Yes.**

17 Q. And were you the majority stockholder during  
18 that entire period?

19 A. **I think between myself and my wife we were.**

20 Q. On a percentage basis, do you recall how much  
21 your wife and you owned of the stock of MHCS?

22 A. **At what point?**

23 Q. Did it change over time?

24 A. **Yes, it did.**



21

1 Q. Say the 2000 to 2002 time frame?

2 A. I don't know for sure, but both Jones and

3 Edwards had stock, and I think they might have owned

4 between five and 10 percent each.

5 Q. Other than yourself, your wife, Jones and

6 Edwards, were there any other stockholders of MHCS in

7 the 2000 to 2002 time frame?

8 A. No.

9 Q. I believe you said earlier one of the things

10 you did was introductions to banking relationships for

11 MHCS?

12 A. Well, I did that back in the period of --

13 prior to '98, that was really the primary role that I

14 played.

15 Q. Did you introduce Heller to MHCS or vice

16 versa?

17 A. No, Heller had contacted Managed Healthcare.

18 Actually, I can't remember the person's name who was

19 trying to introduce Heller to Managed Healthcare, but

20 Heller was not a contact man.

21 Q. Did you leave MHCS before it ceased to exist?

22 MR. ACETO: You mean turn in his shares,

23 resign from the board?

24 BY MR. TUMILTY:

22

1 Q. Resign from the board?

2 A. Well, at the time that the company was

3 dissolved, my wife and I were still stockholders and on

4 the board, but there wasn't any active involvement.

5 Q. I'm not trying to trick you, but at some point

6 you went out on disability. At the time you went out on

7 disability, was MHCS still in existence?

8 A. Yes.

9 Q. Was your reason for leaving MHCS because you

10 were going out on disability?

11 A. No. I had some very significant medical

12 problems. Managed Healthcare at that time was

13 functioning very well.

14 Q. The significant health problems you just

15 referred to, were those the ones you referred to

16 earlier?

17 A. Yes.

18 Q. In the 2000 to 2002 time frame, do you believe

19 you had any responsibilities with respect to MHCS?

20 A. No.

21 Q. When was the last time that you would say that

22 you had responsibilities with respect to MHCS?

23 A. It was prior to sometime in '98.

24 Q. Why do you pick that as kind of the cut-off

23

1 time?

2 A. Because that's when my medical condition was

3 the most severe, and I needed a major time out.

4 MR. TUMILTY: We'll mark this as Exhibit

5 1.

6 (Document marked for identification as

7 Exhibit No. 1.)

8 BY MR. TUMILTY:

9 Q. Mr. Ingoldsby, I've handed you what the court

10 reporter marked as Exhibit 1. It's a document entitled

11 Amended and Restated Unconditional Guaranty of Payment

12 and Performance. Do you recognize that document?

13 A. I'd have to read the whole thing, but it looks

14 familiar.

15 Q. If you turn to the last page, it should have a

16 Bates number in the lower right corner of Jones 1499?

17 A. Yes.

18 Q. Is that your signature on each of those lines?

19 A. Yes.

20 Q. If you turn to the page before that, 1498, is

21 that your signature on the line above the typed name?

22 A. Yes.

23 Q. Do you have any recollection as to whether you

24 read this document before you signed it?

24

1 A. I'm sure I did.

2 MR. TUMILTY: We'll mark this as Exhibit

3 2.

4 (Document marked for identification as

5 Exhibit No. 2.)

6 BY MR. TUMILTY:

7 Q. I'm handing you what the court reporter marked

8 Exhibit 2, Debtor-In-Possession of Loan and Security

9 Agreement By and Between Managed Healthcare Systems,

10 Inc. and Medical Temporaries, Inc., Borrowers, and

11 Heller Healthcare Finance, Inc., lender, dated February

12 28, 2001. Do you recognize that document?

13 A. Yes.

14 Q. If you would please turn to page 51. It's two

15 pages from the back. Is that your signature on the

16 document above your typed name?

17 A. Yes.

18 Q. Do you know if you read this document before

19 you signed it?

20 A. No, I don't.

21 Q. Would it normally be your practice to read

22 documents before you sign them?

23 A. Well, I was relying on my wife at the time.

24 In this particular document, neither one of us --

25

1 there's a section in here that Greg just pointed out,  
2 Section 10.16, that we don't think was in whatever we  
3 signed. We both are of the opinion that this was a fax  
4 page and this is what we signed, not attached to any  
5 other document. That's our belief.

6 Q. By that you mean page 51?

7 A. Yes.

8 Q. So you believe at the time you signed, it's  
9 your testimony that at the time you signed page 51, it  
10 was a single page and not attached to anything else?

11 A. Correct.

12 Q. Were you advised to sign this document by  
13 anybody?

14 A. My wife was involved at the time, but I just  
15 don't recall who the lawyers were that were involved. I  
16 don't remember if it was Greg or someone else. All I  
17 know is that we never agreed and never had a discussion  
18 about a guaranty and it ends up in the document.

19 Q. Who did you discuss the debtor-in-possession  
20 security agreement with other than your wife?

21 A. There was a law firm that was involved,  
22 Hannify & King. It might have been someone there or it  
23 might have been Greg. I just don't remember.

24 Q. Do you know if you had an attorney

26

1 representing you personally in connection with the  
2 debtor-in-possession loan and security agreement?

3 A. I did.

4 Q. Who was that?

5 A. I don't remember his name. Greg would know.

6 Q. Was it an attorney located here in Boston?

7 A. Yes.

8 Q. Do you recall the law firm that attorney works  
9 with?

10 A. No.

11 Q. Why would you have signed a signature page  
12 document, namely page 51, without it being attached to  
13 anything else?

14 A. Well, my wife and I believe we saw drafts of  
15 the agreement or our attorneys saw drafts. I know  
16 papers were being exchanged. The signature page was  
17 faxed to us wherever we were and we signed a single  
18 page. That's what we believe.

19 You have to understand that my arrangement or  
20 my wife's arrangement with Heller was there would be no  
21 personal guaranty, and they agreed to that. So why  
22 would I or my wife agree particularly when the company  
23 is in difficult straits, agree to a personal guaranty?  
24 It wouldn't have happened in a million years.

27

1 Q. And your memory is clear on that?

2 A. It's seared in my memory. That's been a  
3 subject of discussion over and over.

4 Q. Why do you say Heller agreed you or your wife  
5 would not have to give a personal guaranty?

6 A. Because he did agree to that, and we have it  
7 in writing.

8 Q. Where is it in writing?

9 A. It's in the documents we gave you.

10 Q. I'm not trying to sound sarcastic, but you're  
11 sure of that, it's in writing in some of the documents  
12 you gave us?

13 A. Absolutely.

14 Q. Do you recall the name of that document or  
15 what it relates to?

16 A. You can go off the record and talk to Greg and  
17 get that answer.

18 Q. I can't. I need to get your testimony. If  
19 you can't answer, you can't answer it.

20 A. I can't give you the name, but I could go  
21 through all the documents and find it for you.

22 Q. But it's in a document that you produced?

23 A. Yes.

24 Q. Do you recall where you were when you signed

28

1 page 51?

2 A. I think that my wife and I were at Hannify &  
3 King, but I really don't know. When all that was going  
4 on, we spent a lot of time there at Hannify & King.  
5 Maybe I'm just guessing at that.

6 Q. Do you know if Hannify & King had the final  
7 debtor-in-possession agreement in its possession while  
8 you were there?

9 MR. ACETO: Objection.

10 BY MR. TUMILTY:

11 Q. I'll restate that. Your memory or your belief  
12 is that you signed page 51 of Exhibit 2 while you were  
13 at the offices of Hannify & King?

14 A. I don't have a clear memory. All I know is  
15 almost everything surrounding the bankruptcy took place  
16 there. I don't have a clear memory.

17 Q. Who was Hannify & King representing in that  
18 bankruptcy?

19 A. Managed Healthcare.

20 Q. They didn't represent you personally?

21 A. No.

22 Q. Did anyone from Hannify & King discuss the  
23 idea of a personal guaranty with you or your wife?

24 A. No.

1 Q. Do you recall an October 2001 meeting that you  
2 participated in with representatives of Heller  
3 concerning the overstatement of Medicare payments?

4 A. I don't remember the date, but I do remember  
5 going to that meeting.

6 Q. Tell me what you remember about that meeting.

7 A. I remember that Indy and Pam, Indy Edwards and  
8 Pam Jones had raised an issue with Heller about the  
9 borrowing base and the components that were being  
10 calculated into the borrowing base.

11 It dealt with a new methodology that was  
12 adopted by Medicare. I don't remember the technical  
13 name, but it had to basically estimate what the value of  
14 your services would turn out to be on a certain patient.  
15 You would book those revenues accordingly.

16 They felt that they were booking more than  
17 what they should be booking, and they talked to Heller  
18 about it. And right before that meeting -- there wasn't  
19 any big consternation. If anything, Heller was coming  
20 up to visit with them. Heller had done the audits and  
21 had been satisfied.

22 That day, because they wanted me to be there,  
23 I went over. And Heller had their attorney, two of  
24 their health care guys, lenders, I think they had four

1 people in total. And, of course, the people that run  
2 Managed Healthcare were there, Indy Edwards and Pam  
3 Jones and I think someone else.

4 There was a discussion that they all had about  
5 the borrowing base and different ways to interpret what  
6 they were basically including in it. At the end of that  
7 meeting, Heller was satisfied that although there was  
8 some overstatement, there wasn't any big problem.

9 And in fact, they came up with a creative way,  
10 I can't remember exactly what it was, but it was to  
11 reach out to future services and pull those into the  
12 present. So there was no crisis that was a part of that  
13 meeting at all.

14 It was a very pleasant meeting and it lasted  
15 about an hour and a half and they served lunch in the  
16 office and I left. There wasn't ever any mention of a  
17 problem by Heller. In fact, some of the documents that  
18 you should have show the correspondence where they even  
19 made suggestions as to how to enhance the borrowing  
base.

20 So that's what that meeting was all about.  
21 You know, it becomes a focal point for the later  
22 litigation.

23 Q. Which later litigation?

1 A. Heller sued me and my wife.

2 Q. In giving that answer, at one point you said,  
3 and I think it is pretty close, I'm not trying to hold  
4 you to it, you said they wanted you there at this  
5 meeting?

6 A. Right.

7 Q. Who is the "they?"

8 A. Indy and Pam.

9 Q. Did they tell you why they wanted you there?

10 A. Because I was the major stockholder and  
11 chairman.

12 Q. Did they tell you any other reason why they  
13 wanted you there?

14 A. No.

15 Q. Do you know if Heller had requested that you  
16 be at the meeting?

17 A. I don't know that.

18 Q. Why were you at the meeting?

19 A. Well, at this point -- it represented a very  
20 big investment of my wife and myself and this was an  
21 issue that wasn't insignificant. So I went over and I  
22 was satisfied when I left there that the issue was  
23 resolved.

24 Q. Other than what you just said, is there any

1 other reason why you were at the meeting?

2 A. No. I didn't play any role.

3 Q. At some point did Pam Jones inform you of the  
4 results of an audit concerning the borrowing base  
5 certificates?

6 A. Probably. I mean, do you mean in a negative  
7 sense?

8 Q. Either negative or positive. Did she tell you  
9 there had been an audit done of the borrowing base  
10 certificates?

11 A. I know Heller sent auditors in there all the  
12 time, so that wouldn't be unusual.

13 Q. How do you know that?

14 A. I just know because Pam would tell me.

15 Q. Why would she tell you that?

16 A. I mean, I used to get reports faxed to my  
17 house. We did own the company. I mean, I knew the  
18 general health of the company, and I in general knew  
19 what was going on.

20 Q. At some point did Pam Jones tell you she would  
21 no longer certify the borrowing base certificates?

22 A. She told that to Indy Edwards.

23 Q. Did Indy Edwards then tell you that?

24 A. I think so.



33

1 Q. At some point you learned that?

2 A. Right.

3 Q. Do you know or were you told why Pamela Jones  
would no longer certify the borrowing base certificates?

4 A. For the same reasons that I talked about. She  
5 felt they were recognizing more revenue from cases, when  
6 the cases were finished they wouldn't produce that kind  
7 of revenue.

8 Q. Do you know who Michael Gardulo is?

9 A. Yes.

10 Q. He was the vice president at Heller, correct?

11 A. Right.

12 Q. And at some point did you tell Pamela Jones to  
13 contact Mr. Gardulo about the fact that she would no  
14 longer sign the borrowing base certificates?

15 A. I don't remember doing that.

16 Q. You have no memory of that at all?

17 A. I know she talked to him and I could have, but  
18 I just don't remember.

19 Q. Do you have any memory of telling her to  
20 contact him?

21 A. No.

22 Q. Are you aware that Pamela Jones recommended to  
23 Michael Gardulo that he talk to you for an explanation  
24

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1 as to how the borrowing base certificates were being  
2 calculated?

3 A. She wouldn't do that, because she knows I  
4 never had anything to do with that.

5 Q. At some point did Mr. Gardulo call or  
6 communicate with you in some fashion in order to get an  
7 explanation as to how the borrowing base certificates  
8 were being calculated?

9 A. He called me but I don't remember -- they  
10 wouldn't come to me with that kind of a question because  
11 I had no involvement with that.

12 Q. When you say that he called you, what did Mr.  
13 Gardulo call you to discuss?

14 A. The only thing that I remember was the time  
15 when the company was in bankruptcy, and they were trying  
16 to work a loan for Indy and Pam to buy the company. And  
17 he wanted, I think he wanted me to remain on personal  
18 guarantees for one portion of the loan -- I'm not sure  
19 exactly which part it was.

20 But I wasn't willing to do, there was  
21 something I wasn't willing to do during that period of  
22 time. And then it was shortly after that that they went  
23 into court and, the bankruptcy court, and basically told  
24 judge, you know, they were going to file a motion of

35

1 default.

2 Q. The they was Heller?

3 A. Um-hum.

4 Q. Do you remember having any communications with  
5 Mr. Gardulo as to how the borrowing base certificates  
6 were being calculated?

7 A. Well, I think that he was at that meeting that  
8 they held. I think that was really the subject.

9 Q. Leaving that meeting aside, because you  
10 already told me about that meeting, do you recall any  
11 other communications between you and Mr. Gardulo  
12 concerning the calculation of the borrowing base  
13 certificates?

14 A. No, I don't remember specifically. But I do  
15 know that when things were falling apart, Gardulo was  
16 calling often.

17 Q. Was he calling you?

18 A. Yes.

19 Q. And do you have any recollection of the type  
20 of things that you would discuss when he would call you  
21 when things were, to use your phrase, "falling apart?"

22 A. I don't remember really at all.

23 Q. You're aware that National Union provided  
24 insurance coverage to MHCS?

36

1 A. Yes.

2 Q. Did you have any role in obtaining that  
3 coverage during any period of time?

4 A. Other than I told Indy and Pam Jones that we  
5 had to have that. That followed a period of time when  
6 we regretted not having it for this other sexual  
7 harassment case.

8 Q. Other than telling Indy and Pam -- and I  
9 assume you mean directors and officers liability?

10 A. Right.

11 Q. Other than telling Indy Edwards and Pam Jones  
12 that MHCS needed to obtain directors and officers  
13 liability, did you play any other role in the actual  
14 obtaining of the policies?

15 A. No.

16 Q. Prior to their issuance, did you ever have any  
17 communication, you personally, with National Union  
18 regarding any directors and officers policies that had  
19 been issued to MHCS?

20 A. No.

21 Q. Prior to National Union issuing any directors  
22 and officers liability policies to MHCS, did you ever  
23 have any communications with IIG about that?

24 A. Yeah, early on. Probably back in the early

37

1 '90s.

2 Q. Do you know when National Union first started  
3 providing MHCS with directors and officers liability  
coverage?

4 A. No.

5 Q. I just want to make sure you were clear on the  
6 question I asked you two questions ago. When you  
7 responded early on in the early '90s, that was in  
8 response to a question I had asked you as to whether you  
9 ever had any communications with IIG about policies that  
10 National Union was going to issue with respect to MHCS.  
11 Did you understand the question to be that?

12 A. **I don't ever remember having a conversation  
13 with anyone at International about National.**

14 Q. That's what I was trying to get to. So when  
15 you said in the early '90s, were you talking about  
16 policies with some other insurer?

17 A. Yes.

18 Q. Thank you for telling me that, but that's not  
19 what I'm focused on. So it's your testimony to the best  
20 of your memory you never had any communications with  
21 anyone at IIG concerning policies that National Union  
22 was going to issue?

23 A. **People with National or people with IIG?**

38

1 Q. Yes.

2 A. **No, I never did.**

3 MR. ACETO: I think what he's saying is he  
4 didn't necessarily say he wanted National Union's policy  
5 but he did meet with National regarding a D & O policy.

6 THE WITNESS: No --

7 BY MR. TUMILTY:

8 Q. Did you have any communications with IIG say  
9 from 2000 on concerning the purchase of D & O coverage  
10 for MHCS?

11 A. **I just don't remember it. I mean, I gather  
12 from Greg that I might have, but I don't remember it.**

13 MR. ACETO: Can we go off the record for a  
14 minute?

15 (Witness confers with counsel.)

16 BY MR. TUMILTY:

17 Q. So --

18 A. **I still don't remember.**

19 Q. Who at MHCS would deal with IIG in order to  
obtain directors and officers liability insurance?

20 A. **It would have been Indy Edward and Pam Jones.**

21 Q. And do you know if anyone at MHCS dealt  
22 directly with National Union in obtaining directors and  
23 officers insurance?  
24

39

1 A. No, I don't know.

2 MR. TUMILTY: We'll mark this as Exhibit

3 3.

4 (Document marked for identification as  
5 Exhibit No. 3.)

6 BY MR. TUMILTY:

7 Q. I'm handing you what the court reporter marked  
8 as Exhibit 3. It's an affidavit of Pamela Jones in  
9 Civil Action 02 CV 11553 NG. The pages are numbered at  
10 the bottom and please turn to page nine. Do you know if  
11 that's Pamela Jones' signature?

12 A. It looks like it to me.

13 Q. If you turn to page seven. I had asked you  
14 earlier if you were aware that Pam Jones recommended to  
15 Mr. Gardulo that he speak to you as to an explanation of  
16 how the borrowing base certificates were being  
17 calculated?

18 A. Um-hum.

19 Q. You said she wouldn't have done that. If you  
20 look at the paragraph 30 on that page, the second  
21 sentence states, "Mr. Gardulo began to probe me for  
22 details that I felt should be directed to Mr. Ingoldsby,  
23 and I advised Mr. Gardulo that he should speak directly  
24 to Mr. Ingoldsby."

40

1 Does that refresh your recollection at all as  
2 to whether Pam Jones told Mr. Gardulo to speak to you  
3 regarding the borrowing base certificates?

4 A. **No, it doesn't. I think that, the only thing  
5 I can tell you is it was probably at a time when Gardulo  
6 was turning up the heat on her and she saying, "I'm not  
7 going to certify. You need to go to someone else." I  
8 would guess that's what she was doing.**

9 Q. The bankruptcy that we have been referring to,  
10 that was the MHCS bankruptcy, correct?

11 A. Correct.

12 Q. At some point you filed personal bankruptcy,  
13 correct?

14 A. Correct.

15 Q. And do you recall when you did that?

16 A. I think it was December of '02.

17 Q. Can you tell me why you initiated bankruptcy  
18 proceedings, what precipitated that?

19 A. **Well, I just had -- this whole situation with  
20 Heller was overwhelming. I thought I had coverage  
21 through my D & O policy at Managed Healthcare. National  
22 turned it down. I was footing a lot of legal bills.  
23 Heller claimed that I owed, I forget what the number  
24 was, but I think the total was like a million four or**

41

1 something like that.

2 They were claiming I had guaranteed the  
3 bankruptcy, the DIP loan. I just, I was left without  
any choice. I mean, it was just overwhelming.

4 Q. When you say you thought you had coverage and  
5 National had turned it down, you were aware of that  
6 prior to filing your bankruptcy, correct?

7 A. I think so.

8 Q. And I believe one of the other things you  
9 mentioned was that Heller was claiming that you had  
10 guaranteed the DIP loan?

11 A. Correct.

12 Q. I think another thing you said is something  
13 that developed or something precipitating you filing the  
14 bankruptcy was you had a lot of legal bills?

15 A. Relating to this matter.

16 Q. By "this matter," what do you mean?

17 A. The Heller lawsuit.

18 Q. Would you agree with me that one of the  
19 reasons generally for filing bankruptcy is in order for  
20 the debtor to get a fresh start?

21 A. I suppose that's true. In some cases.

22 Q. Do you also understand that as part of a  
23 bankruptcy it's not unusual for there to be payments to  
24

42

1 creditors?

2 A. I understand that.

3 Q. Was a trustee appointed in your personal  
4 bankruptcy?

5 A. Yes.

6 Q. Do you remember the name of that trustee?

7 A. I think his name is Harpley.

8 Q. Do you recall what his first name is or where  
9 he's located?

10 A. Tampa.

11 Q. Tampa, Florida?

12 A. Yes.

13 Q. Do you happen to know whether he's an  
14 attorney?

15 A. I don't know.

16 Q. Were you represented by an attorney in your  
17 personal bankruptcy?

18 A. Yes.

19 Q. Who was that?

20 A. Michael Brundage.

21 Q. You're aware that as part of your bankruptcy  
22 you were required to file schedules and statements of  
23 financial affairs?

24 A. Yes.

43

1 Q. One of the things that was to be listed on  
2 those schedules and statement of financial affairs was a  
3 listing of your assets?

4 A. Correct.

5 Q. Another thing was a listing of any claims that  
6 you had or may have?

7 A. Yes.

8 MR. TUMILTY: We'll mark this as the next  
9 exhibit.

10 (Document marked for identification as  
11 Exhibit No. 4.)

12 BY MR. TUMILTY:

13 Q. Mr. Ingoldsby, I've placed in front of you  
14 what the court reporter marked as Exhibit 4. It's a  
15 document entitled Summary of Schedules filed January 2,  
16 2003 with the United States Bankruptcy Court For the  
17 Middle District of Florida. That was a document that  
18 was filed in your bankruptcy, correct?

19 A. Correct.

20 Q. If you turn to the fourth page from the end,  
21 it should say verification of creditor matrix?

22 A. Yes.

23 Q. Is that your signature on that page?

24 A. Yes.

44

1 Q. The page before that says Chapter 7 Individual  
2 Debtor's Statement of Intention?

3 A. Yes.

4 Q. Is that your signature on that page?

5 A. Yes.

6 Q. If you turn to the page before that, is that  
7 your signature at the bottom of that page?

8 A. Yes, it is.

9 Q. If you go to maybe seven or eight pages before  
10 that, you get to a page that says Declaration Concerning  
11 Debtor's Schedules?

12 A. Yes.

13 Q. Is that your signature on that page?

14 A. Yes.

15 Q. Do you recall how it came to be how the assets  
16 that were listed in your schedules, which we've marked  
17 as Exhibit 4, how those assets came to be selected as  
18 the assets that that would be listed?

19 A. It was laborious. We made up a long list and  
20 met with the attorney and reviewed everything. And some  
21 things we had forgotten, and I know he reminded us of  
22 them. And it took a week to get it organized.

23 Q. You didn't list any interest in any insurance  
24 policies issued by National Union, correct?

45

1 A. Correct.

2 Q. That was a poor question on my part. I want  
3 to make sure the record is clear. On the schedules that  
4 you filed in your bankruptcy, you didn't list any  
5 interest in any insurance policies issued by National  
6 Union, correct?

7 A. Correct.

8 MR. TUMILTY: We'll mark this as the next  
9 exhibit.

10 (Document marked for identification as  
11 Exhibit No. 5.)

12 BY MR. TUMILTY:

13 Q. Why didn't you list on your schedules that  
14 were filed in your personal bankruptcy an interest in  
15 any policy listed by National Union?

16 A. Well, we discussed it, and my attorney didn't  
17 see it as an asset. But I'm looking at this letter and  
18 I don't even know if the suit was filed -- this looks  
19 like it was filed before -- can we go off the record for  
20 a second?

21 Q. You can go off the record to talk to your  
22 attorney if you want to. I'd like to leave that letter  
23 aside for a second --

24 A. I'll answer the question. It came up and it

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1 was discussed, also discussed with the trustee. I never  
2 saw it as an asset. They didn't see it as an asset.  
3 And as I sit here now, I'm trying to remember when --  
4 this was the countersuit against Heller.

5 Q. We'll get to that.

6 A. I'm confused.

7 Q. We've already established that you didn't list  
8 in your bankruptcy schedules any interest in any  
9 policies issued by National Union, correct?

10 A. Correct.

11 Q. And you said that it was discussed with your  
12 bankruptcy attorney whether to list an interest in the  
13 policy, correct?

14 A. Correct.

15 Q. And can you tell me what was said in those  
16 discussions?

17 MR. ACETO: I'm going to instruct him not  
18 to answer that question.

19 MR. TUMILTY: I believe that I'm entitled  
20 to an answer. I will put on the record I'm entitled to  
21 an answer since you appeared to be relying on advice of  
22 counsel defense as to why you did not list them in your  
23 schedules.

24 BY MR. TUMILTY:

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1 Q. Is that the reason you did not list them in  
2 your schedules, because of advice of counsel?

3 MR. ACETO: You can answer that question.

4 BY MR. TUMILTY:

5 A. Yes.

6 Q. Can you tell me what you and your attorney  
7 discussed relating to your bankruptcy schedules?

8 MR. ACETO: If we can agree that the  
9 waiver, which it would be, is going to be a waiver only  
10 of that particular discussion and not anything else?

11 MR. TUMILTY: I'll agree it's a waiver of  
12 discussions or communications regarding that issue.

13 MR. ACETO: Just this specific issue as to  
14 whether to list the National Union potential claims  
15 against National Union to cover or indemnify any  
16 resulting damages?

17 MR. TUMILTY: Yes, I'll agree to that.

18 BY MR. TUMILTY:

19 Q. With that agreement, can you tell me what you  
20 and your bankruptcy attorney discussed regarding the  
21 issue of whether to list any potential claim of coverage  
22 with respect to the National Union policy?

23 A. I don't remember it being a lengthy  
24 discussion. It's just he didn't see it as an asset. It

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1 wasn't any, it wasn't any big deal discussion. But he  
2 did say that he would talk to the trustee about it.

3 Q. Did you see it as an asset of your bankruptcy?

4 A. No, absolutely not.

5 Q. How did the issue even come up that you and  
6 your attorney were discussing the issue of whether to  
7 list an interest in the policy?

8 A. Well, because there was a question about  
9 litigation. To be honest, I don't remember how that was  
10 discussed.

11 Q. Did you and your bankruptcy attorney have any  
12 written communications about the issue of whether to  
13 list an interest in the National Union policy on your  
14 bankruptcy schedules?

15 A. No.

16 Q. Did you personally ever have any discussions  
17 with the bankruptcy trustee regarding the issue of where  
18 to list on your schedules an interest in the National  
19 Union policy?

20 A. No, but I was present when my attorney talked  
21 with him.

22 Q. How many time did your attorney talk to the  
23 bankruptcy trustee about that issue?

24 A. I don't know how many times. I was there once



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1 when I observed it.

2 Q. Can you tell me what was discussed on the  
3 issue of whether to list an interest in the National  
4 Union policy on your schedules with the trustee?

5 A. I don't remember the details. All I know is  
6 that it was discussed, and there wasn't any suggestion  
7 that it be, that the schedules be amended.

8 Q. Do you have any memory of the trustee saying  
9 that he did not think that any interest that you may or  
10 may not have had in the National Union policy was an  
11 interest that should be listed on your schedule?

12 MR. ACETO: Please read it back.

13 MR. TUMILTY: I'll rephrase it.

14 BY MR. TUMILTY:

15 Q. When you said that there was never any  
16 indication that anyone felt the schedules needed to be  
17 amended, what I'm trying to find out is do you have any  
18 memory of the trustee actually saying I don't think  
19 that's an interest that needs to get put on these  
20 schedules?

21 A. I remember the outcome of the conversation.  
22 That's all I remember is they discussed it. I don't  
23 remember what his words were, but it was clearly  
24 discussed and the conclusion was to do nothing.

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1 Q. Do you happen to know whether your attorney  
2 had any written communications with the bankruptcy  
3 trustee regarding the issue of whether to list an  
4 interest in the National Union policy on your bankruptcy  
5 schedules?

6 A. I don't know.

7 Q. I've handed you what the court reporter marked  
8 as Exhibit 5. I want to ask a more general question  
9 before that. Is it fair to say that you're contending  
10 in this action that National Union wrongfully denied  
11 coverage to you?

12 A. Yes.

13 Q. And can you tell me what you believe they  
14 wrongfully denied coverage with respect to, what is it  
15 they should have provided coverage for?

16 MR. ACETO: Which count in the Complaint?

17 MR. TUMILTY: I'll get to that.

18 BY MR. TUMILTY:

19 A. Well, I think that -- I believe a directors  
20 and officers insurance policy should have covered  
21 directors and officers who were falsely claimed by  
22 Heller in this case and very egregious behavior by  
23 Heller that we should have had our defense coverage.  
24 That's really all we cared about at the time,

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1 just getting our defense. Without the defense coverage,  
2 you know, my whole world fell apart.

3 Q. I'm not trying to drag you through painful  
4 memories. I need a frame of reference. Fair to say  
5 that you believed you were entitled to coverage from  
6 National Union with respect to the lawsuit that Heller  
7 brought against you?

8 A. Correct.

9 Q. Do you recall what the claims were that Heller  
10 brought against you?

11 A. Not all. I know that they claimed there was  
12 negligence and breach of guaranty. And I have the  
13 documents to show there was no guaranty. And the  
14 subject of negligence, I know how Indy and Pam worked.  
15 They are two very honest people, super honest. I know  
16 this was all a game that Heller was playing, and  
17 everything unfolded the way Heller wanted it to unfold.

18 And there wasn't any negligence. There  
19 absolutely wasn't any, not even an ounce of negligence.  
20 These two ladies were squeaky clean, and we should have  
21 had some help in defending ourselves. And we didn't get  
22 that. It ruined three people.

23 Q. I understand that you're not a lawyer, but do  
24 you believe that National Union was required to provide

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1 coverage for all of the claims that Heller brought  
2 against you?

3 A. I don't know. I don't have the memory to know  
4 what the counts were at this point. I guess from my  
5 point of view, I think in terms of when you spend  
6 \$20,000 for a directors and officers premium for a year  
7 and you basically don't get anything for it, it just  
8 seems unfair.

9 Q. Earlier you mentioned that you recall there  
10 was a negligence claim and breach of guaranty claim. Do  
11 you believe that National Union should have provided  
12 coverage for the negligence claim?

13 A. Absolutely.

14 Q. Do you believe that National Union should have  
15 provided coverage for the breach of guaranty claim?

16 A. I think National Union should have at least  
17 inquired -- for a company that paid \$20,000 to say no  
18 and not even listen, all they would have to do is look  
19 at the documentation that I have that shows there's no  
20 guaranty.

21 And they should have stepped in to help us  
22 defend ourselves. They never even tried to learn. They  
23 just basically said no.

24 Q. You addressed the negligence claim. I'm

53

1 trying to get to the issue of whether you think they  
2 should have stepped in, in your words, and provided  
3 coverage and done something with respect to the breach  
of guaranty claim.

4 A. **First of all, I don't know whether that would**  
5 **be covered or not. I don't know. All I know is that, I**  
6 **know the negligence subject they should have provided**  
7 **some defense on that. I think, I could be wrong, I**  
8 **would think the breach of guaranty would fall in the**  
9 **same category, but I just don't know.**

10 Q. If you could look at Exhibit 5 in front of  
11 you. It's a letter dated August 2, 2002 from Gregory  
12 Aceto to National Union. Have you seen that document  
13 before?

14 A. **I don't remember it, but I'm sure I must have.**

15 Q. Do you believe this document is related to the  
16 lawsuit that Heller filed against you?

17 A. **Yes.**

18 Q. Do you recall when Heller filed the lawsuit  
19 against you?

20 A. **No, I don't.**

21 Q. If I told you that suit was filed on August 1,  
22 2002, would you have any reason to doubt that?

23 A. **No.**

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1 Q. Do you know if you discussed Exhibit 5 with  
2 Gregory Aceto before he sent that letter to National  
3 Union?

4 A. **I'm sure, but I just don't recall.**

5 Q. Do you recall when you personally first became  
6 aware of the lawsuit that Heller had filed against you?

7 A. **Not really. I would guess that I was served**  
8 **at my home.**

9 Q. But you have no memory of when that would have  
10 been?

11 A. **Not really.**

12 Q. Do you believe it would have been prior to the  
13 time that Attorney Aceto sent Exhibit 5 to National  
14 Union?

15 A. **Didn't you just say they filed it August 1?**

16 Q. **Yes.**

17 A. **I just don't remember. I don't have any**  
18 **reason to doubt that though. I don't know what you're**  
19 **getting at.**

20 Q. I'm just trying to get at when you first  
21 became aware of the lawsuit. Is it fair to say that you  
22 must have been aware of the lawsuit prior to the day  
23 that Attorney Aceto sent Exhibit 5 on your behalf?

24 A. **If the lawsuit was filed on the first and this**

55

1 **was done on the second, it would seem that you would**  
2 **have to have some foreknowledge, but I don't remember**  
3 **it.**

4 Q. Leaving aside you don't remember specifically  
5 when you first became aware of the lawsuit, whenever  
6 that was, were you aware at that time that you had been  
7 named as a defendant?

8 A. **Yes.**

9 Q. And were you aware of what the allegations  
10 were against you?

11 A. **I remember it was a misrepresentation and the**  
12 **breach of guaranty.**

13 Q. And you believed you were served with the  
14 lawsuit at your home?

15 A. **I don't know. I just don't remember where.**

16 Q. When you first received a copy of the  
17 Complaint, did you read it?

18 A. **I'm sure I did.**

19 Q. And by the Complaint, I meant the Complaint of  
20 Heller against you?

21 A. **Right.**

22 Q. After reading that Complaint, were you aware  
23 Heller was seeking monetary damages against you?

24 A. **Yes.**

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1 Q. And do you recall how much those alleged  
2 damages were?

3 A. **Not specifically, but I know it was in the**  
4 **millions of dollars and treble damages.**

5 Q. And after you read the Complaint the first  
6 time, you were aware that Heller was seeking to have you  
7 personally held liable, correct?

8 A. **Correct.**

9 Q. At that time did you consider that there was a  
10 possibility that you might have to pay some amount of  
11 money to Heller as a result of their lawsuit against  
12 you?

13 A. **I think anyone who is sued thinks you might**  
14 **have to end up having to pay. That doesn't make it**  
15 **right.**

16 Q. I understand that. I'm simply asking if at  
17 the time when you finished reading the Complaint, did  
18 you think that there was a possibility that you would  
19 have to at some point pay some money to Heller either by  
20 way of settlement or judgment?

21 A. **Well, no. I mean, I knew that I didn't owe**  
22 **anything. Whether this whole thing worked against me**  
23 **and I ended up being stuck with something is an entirely**  
24 **different matter. All I know is that there was nothing**

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1 that was done that was wrong. And I knew I was dealing  
2 with some highly unethical people, so I don't know what  
3 the outcome would be.

Q. And by the highly unethical people, you're referring to the people at Heller?

6 A. Absolutely.

7 Q. At the time that you were served with the  
8 lawsuit, you believed you had insurance coverage under  
9 the directors and officers liability policy issued by  
10 National Union?

11 A. I thought I did.

12 Q. And at the time that you were served with the  
13 lawsuit, you believed that National Union had an  
14 obligation to pay your defense costs in the suit by  
15 Heller?

16 A. Yes.

17 Q. And at the time that you were served with the  
18 lawsuit, did you also believe that if in the event a  
19 judgment were ever entered against you in the suit by  
20 Heller that National Union would be required to provide  
21 coverage for that judgment?

22 A. Yes, I think so.

23 Q. As you sit here today, do you understand what  
24 Exhibit 5 is requesting or asking for?

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1 A. Well, it's asking, the letter is basically  
2 asking National Union to provide coverage for our  
3 defense.

4 Q. And did you understand that that was the  
5 intent of the letter at the time that it was sent?

6 A. I think so, yes.

7 Q. And again, that's because, as you just  
8 testified, you believed you had insurance coverage with  
9 respect to the claims brought by Heller against you?

10 A. Right.

11 MR. TUMILTY: I'll mark this next.

12 (Document marked for identification as  
13 Exhibit No. 6.)

14 BY MR. TUMILTY:

15 Q. I handed you what the court reporter marked as  
16 Exhibit 6. It's a two-page letter dated October 11,  
17 2002 from Joseph O'Neil to Gregory Aceto. Do you know  
18 if you've seen that document before?

19 A. I believe so.

20 Q. So you know when you first saw that document?

21 A. I don't know the date.

22 Q. Do you know approximately when you first saw  
23 the document?

24 A. Shortly after that I would guess.

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1 Q. Shortly after October 11, 2002?

2 A. Yes.

3 Q. Did you read the letter at that time?

4 A. I did.

5 Q. And --

6 A. Or I would have.

7 Q. And do you believe that you understood what it  
8 meant?

9 A. Yes.

10 Q. And was it your understanding that Mr. O'Neil  
11 was saying that on behalf of National Union there was no  
12 coverage with respect to the claims brought by Heller?

13 A. Yes.

14 Q. At that time did you believe Mr. O'Neil was  
15 correct?

16 A. No.

17 MR. TUMILTY: We'll mark this as the next  
18 exhibit.

19 (Document marked for identification as  
20 Exhibit No. 7.)

21 BY MR. TUMILTY:

22 Q. I've handed you what the court reporter marked  
23 as Exhibit 7. It's an e-mail from Gregory Aceto to  
24 Joseph O'Neil dated November 7, 2002. Have you seen

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1 that document before?

2 A. I don't recall seeing it.

3 Q. Did you know that Attorney Aceto had sent this  
4 e-mail?

5 A. I just, as I sit here, I don't recall it at  
6 all.

7 Q. You have no memory of whether you asked Mr.  
8 Aceto to write this e-mail?

9 A. No. I didn't specifically ask him to write  
10 this e-mail. I mean, we were obviously talking about  
11 the subject matter. I just don't remember this.

12 Q. You can take whatever time you need. Have you  
13 had a chance to review the e-mail?

14 A. Yes.

15 Q. Do you agree with the contents of it?

16 A. It was 1998, and I wasn't involved with the  
17 day to day and I never had any involvement ever in  
18 compiling borrowing base certificates. So that's  
19 accurate. Other than the date, I think that I basically  
20 sometime in the May, June '98 period -- that's off by  
21 six months.

22 Q. But you agree with the position expressed in  
23 the last paragraph of the body of that e-mail that you  
24 were an insured under the National Union policy and that

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1 according to the position set forth here by Attorney  
2 Aceto there was no applicable exclusion and that  
3 National Union or AIG should be required to provide  
coverage and a defense to you?

4 A. I think so. This is cut off.

5 Q. I apologize.

6 A. He played an active role -- I assume that's no  
7 active role. The word no is missing.

8 Q. I'm focusing on the sentence that appears to  
9 say, "Thus, he is an insured under the policy of  
10 insurance and there are no applicable exclus should be  
11 provided a defense by AIG, regardless of whether an  
12 endorsement was or was not part of the policy (th still  
13 remains unclear.)"

14 You agree with the sentiment that you should  
15 have been provided coverage under the policy?

16 A. Yes.

17 MR. TUMILTY: Let's mark this as Exhibit

18 8.

19 (Document marked for identification as

20 Exhibit No. 8.)

21 BY MR. TUMILTY:

22 Q. I've handed you what the court reporter marked  
23 as Exhibit 8. It's a document bearing Bates numbers IIG  
24

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1 Q. It's a two-page letter?

2 A. Right.

3 Q. Do you know if you've ever seen that letter  
4 before?

5 A. I don't know.

6 Q. Do you know if you have ever seen any of the  
7 pages before that are in Exhibit 8?

8 A. All I can tell you is that I remember  
9 requesting that Pam Jones send me a copy of the  
10 directors and officers policy. I can't say that I  
11 remember any of these pages. I wanted to make damn sure  
12 we had a policy.

13 Q. But you can't say sitting here today whether  
14 you've seen any of these pages before?

15 A. No. But that's part of my memory problem.  
16 I've gone over a lot of documents on this case and I  
17 could have, I just don't remember.

18 Q. I understand that. I'm trying to get your --

19 MR. ACETO: The question was more about at  
20 the time period, not whether he reviewed it in  
21 preparation for litigation or something, is that right?

22 MR. TUMILTY: Right.

23 MR. ACETO: Did you understand that?

24 THE WITNESS: Yes.

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1 00003 through IIG 00015. The first page of that Exhibit  
2 8 is a fax cover sheet from International Insurance  
3 Group to Gregory Aceto dated November 26, 2002. There  
4 are enclosures with that fax after that. If you go two  
5 pages in, there's another fax cover sheet dated July 31,  
6 2001 to Pam Jones from Nicholas Sciotto at International  
7 Insurance Group. Have you seen Exhibit 8 before?

8 MR. ACETO: In its entirety? There are  
9 separate documents that I'm not quite sure if they came  
10 together.

11 BY MR. TUMILTY:

12 A. I've never seen the fax pages.

13 (Off the record discussion.)

14 BY MR. TUMILTY:

15 Q. To clarify, what has been marked as Exhibit 8  
16 here today consists of Bates numbers 0077 consecutively  
17 numbered to 0088. It's your testimony that you've never  
18 seen the first page of Exhibit 8 or the second page of  
19 Exhibit 8 before?

20 A. I just don't know. I can't tell you that I  
remember it. I mean, I could have.

21 Q. If you go into the third page of Exhibit 8,  
22 you'll see there's a letter dated July 27, 2001?

23 A. Um-hum.

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1 MR. ACETO: It was when this was created  
2 back in July of 2001 or sometime --

3 MR. TUMILTY: That's one question.

4 BY MR. TUMILTY:

5 Q. Simply sitting here today, do you have any  
6 memory of seeing this document before, Exhibit 8?

7 A. I don't remember seeing, I don't today  
8 remember seeing this. I do know that I had documents  
9 about the D & O policy sent to me. I saw something. I  
10 probably saw this. I just don't remember it today.

11 Q. If you look at the first page of Exhibit 8,  
12 the fax cover sheet to Gregory Aceto from International  
13 Insurance Group, the body of the message there says,  
14 "Attached is a copy of the quote sent to Pam Jones on  
15 July 31, 2001. Please take note that the endorsement  
16 noted 'For-Profit Health Care Amendatory Endorsement'  
17 was disclosed to our client. This endorsement contained  
18 the verbiage regarding Contractual Liability Exclusion.  
19 Let me know if you require additional information." Do  
20 you see that?

21 A. I do.

22 Q. And to your understanding, is the reference  
23 there to "our client" MHCS?

24 MR. ACETO: If you know.



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1 BY MR. TUMILTY:

2 A. **I don't know.**

3 Q. Do you have any reason to doubt that it would  
be MHCS given that the fax was concerning an original  
quote to Pam Jones?

6 A. **I don't know. I have no way of knowing.**

7 Q. Isn't the real reason that there was no  
8 interest in the National Union policy listed on your  
9 schedules in your bankruptcy because both you and your  
10 attorney were aware of the contractual liability  
11 exclusion and realized that you did not have coverage  
12 for the Heller case?

13 A. **No.**

14 MR. TUMILTY: This will be next.

15 (Documents marked for identification as  
16 Exhibit No. 9 and 10.)

17 BY MR. TUMILTY:

18 Q. I've handed you what the court reporter marked  
19 as Exhibit 10. It's a one-page document dated November  
20 5, 2002 bearing Bates number 0102. Have you seen that  
21 document before?

22 A. **I think so. I'm not clear.**

23 Q. Do you have any understanding as to why  
24 Attorney Aceto wrote that letter to International

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1 Insurance Group when he did?

2 A. **It looks like he was looking for a meeting to  
3 review the file.**

4 Q. And by "the file," what do you understand that  
5 to be?

6 A. **I suppose as to the reason why we were denied  
7 coverage.**

8 Q. I believe you have in front of you what the  
9 court reporter marked as Exhibit 9?

10 A. **Yes.**

11 Q. A letter dated March 6, 2003 to Gregory Aceto  
12 from Joseph O'Neil?

13 A. **Yes.**

14 Q. Have you seen that document before?

15 A. **Yes.**

16 Q. Do you recall when the first time was that you  
17 saw this letter?

18 A. **No.**

19 Q. Do you believe it was shortly after March 6,  
2003?

21 A. **I would think so.**

22 Q. Do you believe it was within a week of March  
23 6, 2003?

24 A. **I just don't know.**

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1 Q. I understand that you're not going to know an  
2 exact date. I'm just trying to get a frame of  
3 reference. Shortly afterwards is a bit ambiguous. Do  
4 you believe it would have been a matter of days that you  
5 would have seen this letter after Attorney Aceto would  
6 have received it?

7 A. **It's all guesswork. All I know is that I have  
8 seen this letter, but I don't have any reference in  
9 time.**

10 Q. I take it that you don't have any idea when  
11 you first saw this letter then?

12 A. **I mean, I'd be guessing.**

13 MR. ACETO: Don't guess.

14 BY MR. TUMILTY:

15 Q. I don't want you to guess.

16 A. **I just don't know.**

17 (Lunch recess.)

18 (Document marked for identification as  
19 Exhibit No. 11.)

20 BY MR. TUMILTY:

21 Q. Mr. Ingoldsby, I've handed you a one-page  
22 document that the court reporter marked as Exhibit 11  
23 with the Bates number 588 at the bottom. Do you have  
24 that in front of you?

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1 A. **I do.**

2 Q. Have you seen that document before?

3 A. **No.**

4 Q. Do you have any reason to doubt the accuracy  
5 of it?

6 A. **No.**

7 Q. Do you have any recollection of listing Mr.  
8 Aceto or his law firm as a creditor on your bankruptcy  
9 schedules?

10 A. **Yes.**

11 Q. And do you recall approximately how much you  
12 owed him at the time that you listed his law firm?

13 A. **I really don't.**

14 Q. Prior to you filing bankruptcy, can you tell  
15 me what other legal fees you incurred in connection with  
16 the Heller matter other than fees to Mr. Aceto's law  
17 firm?

18 MR. ACETO: Relating to the Heller matter  
19 only or any legal fees?

20 MR. TUMILTY: We'll start with Heller and  
21 then go broader.

22 BY MR. TUMILTY:

23 A. **I don't remember any other law firm being  
24 involved with the Heller matter. As I sit here today, I**

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1 would guess that it would be just whatever I owe to the  
2 Aceto law firm.

3 Q. I know you identified earlier that you had  
been deposed in a different pieces of litigation and  
weren't exactly sure of the years in which those  
6 happened. Were there other legal fees that you were  
7 incurring in say the year or two years leading up to  
8 when you filed bankruptcy?

9 A. No. That was covered.

10 Q. Can you tell me what the ultimate outcome of  
11 the Heller action was with respect to you?

12 A. We reached a settlement in the bankruptcy  
13 court in Florida, and I had to come up with \$250,000.  
14 And it was split up between creditors, and how much  
15 Heller got I think was something like, something in  
16 excess of \$100,000.

17 MR. TUMILTY: We'll mark this next.

18 (Document marked for identification as  
19 Exhibit No. 12.)

20 BY MR. TUMILTY:

21 Q. I've handed you a document that the court  
22 reporter marked as Exhibit 12. It's a multi-page  
23 document, Bates numbers 0112 through 0130. Is that the  
24 settlement agreement you were just referring to?

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1 A. Yes.

2 Q. Do you know where the funds came from to fund  
3 the settlement in the bankruptcy case?

4 A. They all came from different sources, myself  
5 and my wife. We sold, we were forced to sell our house  
6 in Florida and pulled some cash out of that. That in  
7 part was used. We later refinanced a house in  
8 Massachusetts and pulled cash out of that. It was all  
9 our money.

10 Q. Do you know if any of the monies used to fund  
11 the settlement with Heller came from places other than  
12 assets that were considered part of your bankruptcy  
13 estate?

14 MR. ACETO: Objection.

15 BY MR. TUMILTY:

16 A. You mean like borrowing from someone else?

17 Q. Yes.

18 A. No.

19 Q. So all the funds that were used to pay the  
Heller settlement came in some fashion or another from  
assets that were either yours or your wife's?

22 A. Right, or principally real estate. And that  
23 was disclosed.

24 Q. To your knowledge, did the settlement that you

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1 entered into with Heller resolve both the negligent  
2 misrepresentation claim that they had brought and the  
3 breach of guaranty claim?

4 A. In terms of their claim against me?

5 Q. Yes.

6 A. Yes.

7 Q. Did the settlement with Heller include both  
8 you and your wife?

9 A. Yes. I'm pretty sure it was my wife. Yes,  
10 her name is in here.

11 Q. Do you know how many settlement agreements you  
12 entered into with Heller with respect to the litigation  
13 against you?

14 A. I thought it was just this.

15 Q. I'm not suggesting there was another one.

16 A. No, I think this is it.

17 Q. To your knowledge, there isn't another  
18 settlement agreement between yourself and Heller?

19 A. No.

20 Q. I can't remember what number you said went to  
21 Heller, I think you said in the range of 110, 120,000?

22 A. It's in the settlement agreement.

23 Q. I'm not trying to put words in your mouth.

24 The amount that went to Heller, that's encompassed

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1 within the \$250,000 total?

2 A. Yes.

3 Q. Do you know what other creditors were paid off  
4 pursuant to the settlement agreement that's been marked  
5 as Exhibit 12?

6 A. I don't think anyone has been yet.

7 Q. Do you know if Heller has been paid under that  
8 settlement agreement?

9 A. Well, I don't know how I know this, but I  
10 think recently I heard the monies hadn't been  
11 distributed. I think the case of Foster, as part of the  
12 settlement agreement, I think he got his money up front.  
13 But I think he's the only one. To the best of my  
14 knowledge, nothing has been distributed.

15 Q. Do you know who is responsible for  
16 distributing those settlement funds?

17 A. I guess the trustee.

18 Q. The bankruptcy trustee?

19 A. Yeah.

20 MR. TUMILTY: We'll mark this as Exhibit  
21 13.

22 (Document marked for identification as  
23 Exhibit No. 13.)

24 BY MR. TUMILTY:

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1 Q. Mr. Ingoldsby, I hand you what the court  
2 reporter has marked as Exhibit 13. It's your First  
3 Amended Complaint in Intervention in this action. Have  
4 you seen that document before?

5 A. Yes.

6 Q. Did you review that document before it was  
7 filed?

8 A. Yes.

9 Q. Please turn to paragraph 15 on page four. You  
10 see it starts with Exclusion 4H?

11 A. Um-hum, okay.

12 Q. Is it your understanding that the language of  
13 that provision is at least one of the reasons that  
14 National Union has put forth as a basis for denying  
15 coverage to you in the Heller matter?

16 A. Yes, I understand that's their position.

17 Q. I'm not asking you to agree with it. I'm  
18 asking if you have that understanding?

19 A. Yes.

20 Q. If I refer to that as a contractual liability  
21 exclusion for purposes of this deposition, can we agree  
22 that's what I'm referring to?

23 A. Okay.

24 Q. If you look at paragraph 19, it states, "The

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1 language of exclusion 4H, as amended, significantly  
2 decreased, if not altogether eliminated, the value of  
3 the policy to MHCS by excluding any claims arising from  
4 contractual liability," do you see that?

5 A. I do.

6 Q. Do you agree with that?

7 A. Yes.

8 Q. And can you explain to me how the language of  
9 Exclusion 4H would do what is alleged in paragraph 19?

10 A. Well, basically it reduces the policy. You  
11 pay \$25,000 for it and you get nothing, absolutely  
12 nothing for it. I don't think it can be any clearer  
13 than that.

14 Q. To your knowledge, would MHCS have purchased a  
15 directors and officers liability policy with that type  
16 of exclusion in it?

17 A. Never. I didn't know about it.

18 MR. ACETO: I would like to talk to him  
19 for a moment.

(Witness confers with counsel.)

20 MR. ACETO: He would like to clarify the  
21 answer he gave after talking with me about it.

22 MR. TUMILTY: I'll just move on.

23 MR. ACETO: Okay.

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1 BY MR. TUMILTY:

2 Q. In the same exhibit, Exhibit 13, paragraph 18,  
3 please review that paragraph to yourself.

4 A. Okay.

5 Q. It states, "Upon information and belief,  
6 International failed to fully advise MHCS regarding the  
7 language of the alleged exclusion and the effective said  
8 exclusion on MHCS's liability coverage under the  
9 policy."

10 Do you know what the basis is for that  
11 paragraph?

12 A. Yes. I mean, I had what I thought was a  
13 long-term relationship with International. We had been  
14 buying our insurance from them probably since 1990.  
15 They obviously had, you know, an obligation to advise me  
16 of things.

17 I never knew anything about such an exclusion.  
18 I think International or National, someone, owed me an  
19 explanation, and they should have brought it to my  
20 attention.

21 Q. You don't know for a fact that International  
22 did not bring it to the attention of either Pamela Jones  
23 or Indy Edwards, do you?

24 A. No, I don't know.

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1 MR. TUMILTY: We'll mark that as the next  
2 exhibit.

3 (Document marked for identification as  
4 Exhibit No. 14.)

5 BY MR. TUMILTY:

6 Q. I've handed you what the court reporter has  
7 marked as Exhibit 14. If you could take whatever time  
8 you need and look through that document.

9 A. I recognize it.

10 Q. Exhibit 14 is a multi-page document bearing  
11 Bates numbers 0131 through 0199. I will represent to  
12 you that it is a document that was produced by your  
13 counsel on your behalf in this action. You said you  
14 recognized this document?

15 A. Yes, it's an insurance policy, directors and  
16 officers policy from National Union.

17 Q. You'll see on the front page of Exhibit 14  
18 that there's a policy period listed under item 3.

19 A. Yes.

20 Q. And it's August 4, 2000 to August 4, 2001?

21 A. Yes.

22 Q. Would you agree with me that this is the  
23 policy immediately preceding the policy that's at issue  
24 in this case?

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1 A. The policy that is at issue?  
 2 Q. No, the one before that, the one for the prior  
 3 year?  
 4 A. I'm really not sure how to answer that. I  
 5 mean, are you talking about the year prior to the time  
 6 that Heller sued?

7 Q. Let me come about it a different way. In this  
 8 case, you're contending that a policy from National  
 9 Union provided coverage to you for the Heller action?

10 A. Correct.

11 Q. Do you know for what year that policy was in  
 12 effect?

13 A. No, I don't recall.

14 Q. For purposes of this deposition, I'll  
 15 represent to you that the policy that's in front of you,  
 16 Exhibit 14, is the one for the prior year.

17 A. Okay.

18 Q. Would you have gotten a copy of this policy?

19 A. Yes.

20 Q. When you would get copies of the directors and  
 21 officers policies, you were a named insured on them,  
 22 correct?

23 A. I believe so.

24 Q. When you would get copies of policies that had

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1 been issued by National Union, would you read them?

2 A. Yeah, but I wouldn't read every word.

3 Q. Would you discuss them with anyone?

4 A. I don't think I did.

5 Q. You didn't discuss them with Pamela Jones or  
 6 Indy Edwards?

7 A. No.

8 Q. Did you discuss them with anyone at IIG?

9 A. No.

10 Q. Did you discuss them with an attorney at that  
 11 time?

12 A. Not at that time.

13 Q. I believe it's been your testimony that to  
 14 your knowledge none of the directors and officers  
 15 liability policies that National Union issued to or  
 16 provided to MHCS contained a contractual exclusion as we  
 17 saw it alleged in your Complaint?

18 A. I don't think that's what I said. I said I  
 19 never knew at the time or I wouldn't have paid the  
 20 \$25,000 or I wouldn't have allowed our company to spend  
 21 \$25,000.

22 Q. This is an important point, so I want to make  
 23 sure it's clear. Your testimony is you never knew that  
 24 a contractual liability exclusion may have been in the

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1 policies issued by National Union?

2 A. Correct.

3 Q. Are you also contending the policies did not  
 4 contain a contractual liability exclusion?

5 A. No, I'm not.

6 Q. If you would turn to page, they are Bates  
 7 numbered in the middle, and go to page 0176. You'll see  
 8 that at the top of that page it says Endorsement 1?

9 A. Okay.

10 Q. And if you go to the second paragraph, there  
 11 is a subparagraph F, do you see that?

12 A. Yes.

13 Q. Do you know if you reviewed this paragraph at  
 14 the time you received a copy of Exhibit 14?

15 A. No.

16 Q. Please turn to page 0196. It says Endorsement  
 17 5 at the top?

18 A. Yes.

19 Q. There's a Roman numeral two, Amendments to  
 20 Exclusions, do you see that?

21 A. Yes.

22 Q. Do you know if you read the text that's in II  
 23 at the time you received a copy of Exhibit 14?

24 A. I don't remember ever seeing it.

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1 Q. You're free to look at the exhibit if you need  
 2 to, but the two exclusions that I just showed you, were  
 3 you aware of their existence prior to me just showing  
 4 them to you right now?

5 A. Yes.

6 Q. When did you first become aware of their  
 7 existence?

8 A. Sometime after National Union declined  
 9 coverage.

10 Q. Prior to the time that you filed bankruptcy?

11 A. Yes, I'm pretty sure that's the case.

12 MR. TUMILTY: I'll have this marked next.

13 (Document marked for identification as  
 14 Exhibit No. 15.)

15 (Brief recess.)

16 BY MR. TUMILTY:

17 Q. I'm handing you a copy of what the court  
 18 reporter marked as Exhibit 15. It's a multi-page  
 19 document Bates numbered 0200 through 0271. Do you  
 20 recognize that document?

21 A. I think so.

22 Q. I'll represent to you that it's a document  
 23 that was produced to us in this case by your counsel on  
 24 your behalf.

1 A. Okay.

2 Q. Maybe that's why it has the Bates numbers in  
3 this particular format there. Can you tell me what it  
4 is?

5 A. It's a policy issued by National Union to  
6 Managed Healthcare Systems. It's a directors and  
7 officers insurance policy.

8 Q. On the front page, there's a section item 3,  
9 policy period August 4, 2001 through August 4, 2002?

10 A. Yes.

11 Q. Have you seen a copy of this before?

12 A. Yes.

13 Q. Did you see a copy on or about the time the  
14 policy was issued?

15 A. I'm sure that I saw it sometime after it was  
16 issued. A copy would have been sent to me.

17 Q. Would it have been your practice to read a  
18 copy of the policy when you received it?

19 A. Not thoroughly but I would peruse.

20 Q. Please turn to page 0247. You'll see it says  
21 endorsement No. 1 at the top and there's a No. 10,  
22 Clause 4, do you see that?

23 A. Yes.

24 Q. And under that, there's a subsection F, do you

1 see that?

2 A. Yes.

3 Q. Please review that to yourself.

4 A. Okay.

5 Q. Do you know if you reviewed that section when  
6 you first received a copy of Exhibit 15?

7 A. No, I don't believe I did.

8 Q. Do you have any memory of discussing Exhibit  
9 15 with either Pamela Jones or Indy Edwards?

10 A. No. I would like to correct that. I did not  
11 until after the suit was filed and National Union  
12 responded with the denial coverage. Then we did discuss  
13 it.

14 Q. Did you discuss Exhibit 15 with both Indy  
15 Edwards and Pamela Jones?

16 A. Probably, but I don't know.

17 Q. Tell me what you remember about discussing  
18 Exhibit 15 with either Pamela Jones or Indy Edwards.

19 A. This, of course, was after the response from  
20 National Union.

21 Q. I understand.

22 A. I remember talking about how National Union  
23 really chose to interpret that section and that  
24 basically the policy was worthless. We had spent

1 \$25,000 and neither one of them could tell me anything  
2 that we would get for that \$25,000. Just about anything  
3 that, almost, I can't think of anything that doesn't  
4 somehow tie into a contract. So it was that kind of  
5 discussion.

6 Q. Did either Pamela Jones or Indy Edwards  
7 indicate to you that they were aware that that provision  
8 or a provision like that was in the policy?

9 A. I don't remember.

10 Q. Did either Pamela Jones or Indy Edwards ever  
11 indicate to you that they had discussed that type of a  
12 provision, mainly a contractual exclusion provision,  
13 with anyone from International?

14 A. I don't remember.

15 Q. Do you believe that the claims that Heller  
16 asserted against you in the Heller action were somehow  
17 related to a contract?

18 A. Well, I think that the breach of guaranty was  
19 not relating to the contract because there is no, there  
20 was no guaranty. So to that one I would say no. If  
21 they could produce a written guaranty, then I would be  
22 proven wrong. There isn't such a document.

23 As far as the negligence is concerned, I think  
24 that, I know that there was not any negligence. I think

1 it's how National Union chooses to interpret this is my  
2 subject. I think it should be covered. You can't --  
3 what good is the policy? You are basically taking  
4 25,000, and I can't come up with a single thing that  
5 would be covered. That's how I feel about it.

6 And that's what I told them after the  
7 rejection from National Union came. And they couldn't  
8 think of anything that would be covered either.

9 MR. ACETO: By them, you mean Pam and Indy  
10 Edwards?

11 THE WITNESS: Right.

12 BY MR. TUMILTY:

13 Q. I understand that's how you feel about it and  
14 that's what you believe. You've already answered with  
15 respect to the breach of guaranty count. I know you've  
16 said in your mind there was no negligence to support the  
17 negligent misrepresentation count.

18 Do you believe the negligent misrepresentation  
19 count was somehow related to or based on a contract?  
20 I'm not asking you to agree there was negligence but  
21 just what your view of that count is. What do you think  
22 that related to?

23 A. I don't know. I hadn't thought of it that  
24 way. I think that -- if you want to really go strictly



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1 as National Union is choosing to go, you can say  
2 everything is a contract. You can say, yeah, it's  
3 contractual.

I mean, if we had a liability for, I don't  
know, for a janitor that did something wrong, you had a  
6 contract to clean the offices -- nothing is covered.  
7 That's my problem. When I look at it, I just think, I  
8 don't know what you're trying to get me to say -- I  
9 don't know. All I know is that the whole thing is a  
10 joke, total joke.

11 Q. All I was trying to get you to say was  
12 whatever your view was on that first count.

13 A. That's my view.

14 MR. TUMILTY: We'll mark this next.

15 (Document marked for identification as  
16 Exhibit No. 16.)

17 BY MR. TUMILTY:

18 Q. I've handed you a copy of what was marked as  
19 Exhibit 16. It's entitled Affidavit of Michael  
20 Ingoldsby. There are certain exhibits attached to it.  
21 Do you recognize that document?

22 A. Yes.

23 Q. Please turn to page six of Exhibit 16. Is  
24 that your signature on that page?

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1 A. Yes.

2 Q. Did you review this?

3 A. I did.

4 Q. If you would please turn to the second page.

5 A. Yes.

6 Q. You see there's a sentence at the top of that  
7 page that says, "In fact, I have not been involved in  
8 the operations of MHCS since 1999 due to a medical  
9 condition which disabled me," do you see that?

10 A. Yes.

11 Q. Is there any other medical condition that has  
12 disabled you from 1999 other than what you told me about  
13 this morning?

14 A. Well, I've had some cardiac issues and have  
15 had six angioplasties from 2003, 2005. In addition to  
16 the ones I told you, I think that's it.

17 Q. If you would look at paragraph five, that's  
18 consistent with your testimony today, correct?

19 A. Well, I didn't do personal business with  
20 International or National. I mean, initially  
21 International was introduced to me by, it was either one  
22 of two people.

23 I don't really remember which of the two. I  
24 think they both knew Jack Perkins. I know that they

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1 introduced me to International probably around 1990 and  
2 had made the introduction because they thought that  
3 International was someone who could really help a  
4 growing business.

5 Quite frankly, I think that's the only time I  
6 met them. I don't even remember who it was that I met  
7 at the time but -- so somewhere around 1989, '90, '91  
8 is the time I met them. But after that time, I didn't  
9 have any dealings with them.

10 Q. As it says in paragraph five, you weren't  
11 involved in MHCS's procurement of insurance coverage,  
12 were you?

13 A. I was not.

14 Q. Please review paragraph ten to yourself.

15 A. Okay.

16 Q. Where it says in the second sentence of that  
17 paragraph, "In addition, a copy of the policy I received  
18 was not bound," do you remember who you received a copy  
19 of the policy from?

20 A. It would have come from Managed Healthcare,  
21 either Indy Edwards or Pam Jones.

22 Q. For insurance policies that National Union  
23 issued to MHCS, when you would receive copies of those,  
24 were they usually bound?

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1 A. I don't remember. I do know the former  
2 insurance company, their copies were always bound. I  
3 think that this is probably just a copy that someone  
4 from the office made.

5 Q. Do you believe that the copy that you received  
6 was a copy that someone at the MHCS office had made and  
7 then sent to you?

8 A. Oh, yes.

9 Q. Can you tell me what the basis is for the  
10 first sentence in paragraph ten of your affidavit?

11 A. The copy that I got didn't have that  
12 endorsement. When I wrote this up, that was my belief,  
13 that wasn't there. I think that's all that means.

14 Q. It's your testimony that the copy you received  
15 did not have Endorsement 8. Do you know for a fact  
16 whether the copy that was provided by IIG to MHCS  
17 included a copy of Endorsement 8?

18 A. I later learned that it was included.

19 Q. In preparing this affidavit, leaving your  
20 attorney aside, did you obtain information from anyone  
21 else so you could prepare this affidavit?

22 A. I'd have to go through and see the content to  
23 see. I could have contacted the law firm in Florida  
24 that represented me to get information. I think mostly

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1 it would have been with counsel.

2 Q. If you look at page two in paragraph five,  
3 given that you were not involved in the procurement of  
4 insurance coverage by MHCS, I'm wondering how you knew  
5 the information contained in paragraph seven and eight,  
6 do you recall?

7 A. I don't know specifically. After the fiasco  
8 we had with this when we didn't have the appropriate  
9 insurance, as an owner of the company, I demanded they  
10 get it and get it in place. And I knew it was in place.

11 Q. Page three, paragraph 16 on the next page, I  
12 take it that at the time the first sentence of paragraph  
13 16 was prepared you were not aware that Endorsement 8  
14 actually was in the copy of the policy provided to MHCS?

15 A. That's correct. If I had known that nothing  
16 was covered for 25,000, I would have insisted that the  
17 company do something about it.

18 Q. If you look at paragraph 20 on the next page,  
19 page four?

20 A. Which number?

21 Q. 20. Do you know if the amount listed there,  
22 the \$19,396.24, was the total amount of legal fees you  
23 incurred in the Heller action?

24 A. No. I think, I don't know for sure. But I

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1 know there are monies in addition to that that I wasn't  
2 able to pay to Greg Aceto's firm that are still  
3 outstanding. I'm assuming that those are monies that  
4 were paid to his firm.

5 Q. I'm hoping you can clarify something for me on  
6 paragraph 21. Where it says "as a result thereof," do  
7 you know what that's referring to?

8 A. Because of the Heller suit and because  
9 National chose not to provide coverage for this, I was  
10 left with no choice. I was facing insurmountable  
11 liabilities. It was as a result of all that litigation.

12 Q. I just wanted to clarify that the "as a result  
13 of" wasn't referring simply to the \$19,000 in legal  
14 fees?

15 A. Oh, no.

16 Q. With respect to the Heller litigation, do you  
17 know approximately how much in legal fees you had  
18 incurred prior to the time you filed for bankruptcy?

19 A. You'd have to get that from Greg Aceto's  
20 office.

21 Q. If you look at paragraph 31, there's a  
22 reference there to notification to the bankruptcy  
23 trustee?

24 A. Yes.

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1 Q. Is that the notification we were talking about  
2 earlier today?

3 A. Yes.

4 Q. To the best of your memory, have you told me  
5 everything you recall about discussions with the  
6 bankruptcy trustee about any claims by you against  
7 National Union?

8 A. I think I've been clear. That subject was  
9 disclosed. It was not something that anyone really saw  
10 as an asset. And he didn't either. I remember it just  
11 being dropped.

12 Q. I wasn't suggesting you weren't clear. I was  
13 wondering whether during the course of today given the  
14 questions you answered if there was anything else you  
15 remembered discussing with the bankruptcy trustee?

16 A. No.

17 Q. If you go to paragraph 35, the \$100,721 in  
18 legal fees that's referenced there, were those legal  
19 fees incurred in connection with your bankruptcy?

20 A. Yes.

21 Q. Paragraph 36 where it refers to the sale of  
22 your residence in Osprey, Florida --

23 A. Yes.

24 Q. -- what was the sale price of that

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1 transaction?

2 A. 1,399,000.

3 Q. Resulting in a total loss of \$536,688. How  
4 was that amount calculated?

5 A. The difference between what I sold it for and  
6 what it was appraised for maybe three to six months  
7 before then. It was appraised for a million 750, and I  
8 put it on the market for that price and had to drop and  
9 drop. I needed the cash. I have all those appraisals.

10 Q. Do you recall how much you paid for the house  
11 in Florida?

12 A. A million one.

13 Q. The last sentence of paragraph 36, was the  
14 amount of the additional indebtedness that you added to  
15 your home in Hingham, was that \$250,000?

16 A. Yes.

17 Q. Why was that additional indebtedness added to  
18 your home in Hingham at that time?

19 A. Well, I needed not only the money for the  
20 settlement, I had legal fees, I don't remember what the  
21 balance to be paid was. I had tapped out a home equity  
22 line that I had to pay off. I was basically robbing  
23 Peter to pay Paul to get through this period.

24 Q. As you sit here today, can you tell me what

1 damages you believe that you've suffered as a result of  
2 National Union's decision not to provide coverage for  
3 you in the Heller action, basically what damages you're  
seeking in this case?

MR. ACETO: Aside from what you already  
covered or do you want him to list everything again?

MR. TUMILTY: I'd like the full list.

BY MR. TUMILTY:

Q. You don't have to go into detail on the things  
you told me about, but I would like a full list. I want  
to have an understanding of what you believe your  
damages are.

MR. ACETO: Rather than dollar figures,  
you want categories of what the damages are?

MR. TUMILTY: Sure.

BY MR. TUMILTY:

Q. You can say I believe I've been damaged  
because I had to sell my home and go down a list or give  
me the dollar numbers as you go, however you want to do  
it.

A. My life has changed completely. Going back to  
the time prior to the Heller action, we had a very  
valuable entity in that company. It should never have  
been converted in the bankruptcy court. There is a

1 direct link.

2 When you lose your main asset -- I lost about  
3 a million eight in loans that just went poof and  
4 disappeared. It never should have happened. It was  
5 largely due to the positioning of Heller, which I happen  
6 to know why they did what they did and so do the other  
7 officers of the company.

8 But when that happened and I didn't have  
9 someone to stand beside me when I thought I had  
10 coverage, because I really needed to fight these people,  
11 because I think they are bad guys, and I think the  
12 people that worked with me were honest and  
13 straightforward.

14 There was no game playing. I assure you there  
15 was never any negligence. If there was, I would be  
16 very, very surprised. But not to have someone stand  
17 beside me caused me, I became very severely depressed.  
18 I had a lot of angina and ended up with six  
19 angioplasties. I'm on a ton of medication.

I'm 60 years old. Just last week my wife and  
I sold our house in Hingham. We are trying to put  
together our retirement. We are renting until we are  
able to get back on our feet. Not being able to stand  
up to the bad guys of Heller caused me to, caused me all

1 of these health-related issues.

2 When you're drained financially, you lose any  
3 level of confidence that you have at the same time. I  
4 think that, I think it's not just what I spent, I think  
5 it's a life that's ruined that just needed to have  
6 someone stand beside them to fight off people that  
7 needed to be fought off. And I ran out of gas and my  
8 body pretty much ran out of gas.

I used to be a pretty affluent guy and I'm not  
now.

MR. ACETO: Do you want him to go through  
the damages listed in the affidavit, more of the special  
damages?

MR. TUMILTY: I'll go a piece at a time.

BY MR. TUMILTY:

Q. I'm not trying to minimize anything. When you  
say it's worth a lot, what do you think that's worth?

MR. ACETO: What he just described from  
the prior answer?

MR. TUMILTY: Yes.

BY MR. TUMILTY:

A. I think that if someone had stood beside me  
and fought these guys, you know, I would be, I would  
probably be worth three or four or \$5 million right now,

1 because I don't think I would have lost.

2 Q. And if you had to put an estimate on your net  
3 worth right now, what would you say it is?

A. Somewhere in the neighborhood of \$500,000.

Q. When you said there were \$5.8 million worth of  
loans that went poof, were those loans from you to MHCS?

A. Yes.

Q. Did you recover anything on those loans?

A. No.

Q. Then you said something along the lines of  
positioning by Heller, do you recall that?

A. Um-hum.

Q. What were you referring to?

A. It's a long story. If you want, I'll tell you  
the story. To try to make it as succinct as possible,  
this whole subject of negligence on the borrowing  
certificates is just the opposite. If anything, they  
were showing the two ladies that ran the company ways to  
create recognition of revenue streams.

The reason that Heller changed their stripes  
is because Pam Jones was such an honest person that she  
just wasn't comfortable doing what they said she could  
do. Although we were in bankruptcy at the time, Heller  
basically saw a company that was going to be able to



1 fund the loans, there wasn't going to be a problem with  
2 that, but they seemed to become -- they became very,  
3 very aggressive with the bankruptcy judge. They did  
4 things that were so out of character just to upset the  
5 judge.

6 And one of the other partners from Edward and  
7 Angell, she knows they are bad guys. She despises them.  
8 I don't know if she would admit that now. They caused  
9 the bankruptcy judge to put the company in bankruptcy  
10 and they kept all the receivables. There's never been  
11 an accounting.

12 The overline, which was the only part I  
13 guaranteed, which was about \$200,000, that was supported  
14 by the private receivables. It was in excess of  
15 200,000. Pam Jones and Indy Edwards both fully expected  
16 that that was all collected. If there was anything left  
17 on that guaranty of mine for that portion, we all would  
18 have been surprised.

19 But they never gave us any accounting. And  
20 Heller ended up where they collected all the  
21 receivables, and they saw an opportunity with this D & O  
22 policy to make it a bad pay day. And if I hadn't been  
23 so beaten down with this bankruptcy, I never would have  
24 signed that settlement agreement.

1 The two ladies who signed affidavits that they  
2 were negligent, neither one of them believe it. They  
3 had such pressure on them from Heller, and they are both  
4 people that are, they are both divorced and scared to  
5 death. Heller was putting big time pressure on them.

6 My wife was with me when we read the  
7 settlement discussion, and they were just as mean as you  
8 could imagine. She wanted to get away from it and we  
9 signed it and called it a day. Heller is not the good  
10 guy. I've lost my right to go after them. But that's  
11 why I needed to have someone stand beside me.

12 Q. Can you explain to me what the overline is  
13 that you guaranteed?

14 A. Heller would lend only on Medicare and  
15 Medicaid and I think government -- as well as Blue  
16 Cross/Blue Shield and insurances. They had a formula.  
17 We had another group of customers who were private pays.  
18 They don't lend against private pay.

19 But in our case, they made an exception and  
20 they made a separate loan on that particular component.  
21 But they made me guaranty that overline. And it was  
22 about 200,000.

23 MR. TUMILTY: This is a logical place to  
24 break for the day.

1 (Whereupon the deposition was suspended at  
2 2:45 p.m.)

# CERTIFICATE

3 I, MICHAEL INGOLDSBY, do hereby certify that I have  
4 read the foregoing transcript of my testimony, and  
5 further certify that said transcript is a true and  
6 accurate record of said testimony.

7 Dated at \_\_\_\_\_ this \_\_\_\_\_  
8 day of \_\_\_\_\_, 2006.

13 MICHAEL INGOLDSBY

15 Signed under the pains and penalties of perjury.

## 1 CERTIFICATE

2  
3 COMMONWEALTH OF MASSACHUSETTS  
4 PLYMOUTH, SS.

I, Patricia M. Haynes, a Notary Public in and  
for the Commonwealth of Massachusetts, do hereby  
certify:

That MICHAEL INGOLDSBY, the witness whose  
testimony is hereinbefore set forth, was duly sworn by  
me and that such testimony is a true and accurate record  
of my stenotype notes taken in the foregoing matter, to  
the best of my knowledge, skill and ability.

IN WITNESS WHEREOF, I have hereunto set my  
hand and Notarial Seal this day of October 2006.

\_\_\_\_\_  
Patricia M. Haynes, CSR  
Notary Public

My commission expires July 30, 2010

## ERRATA SHEET

Please indicate the page number and line number along  
with the correction.

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MICHAEL INGOLDSBY

COPLEY COURT REPORTING  
58 Batterymarch Street, Suite 317  
Boston, Massachusetts 02110  
617-423-5841

DATE: October 23, 2006

TO: Johnson & Aceto, P.C.  
ATT: Gregory J. Aceto, Esquire  
67 Batterymarch Street  
Boston, Massachusetts 02110

IN RE: Ingoldsby VS National Union

Dear Mr. Aceto,

Enclosed herewith is your copy of the  
transcript of the deposition of MICHAEL INGOLDSBY, taken  
on Friday, October 20, 2006, in the above-mentioned case

In compliance with applicable rules, the  
witness will read the transcript and sign the signature  
page and errata sheet and return them as soon as  
possible to the respective attorneys involved. Any  
changes or corrections are to be made separately on the  
enclosed errata sheets signed by the witness.

If the witness has not read and signed the  
transcript and returned it to the parties involved  
within thirty days, the transcript will go in as  
testified to under oath

Thank you for your anticipated cooperation.  
If you have any questions, please feel free to call on  
me.

Very truly yours,

Patricia M. Haynes

CC: John J. Tumilty, Esquire  
Syd A. Saloman, Esquire

## 1 CERTIFICATE

2  
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4 PLYMOUTH, SS.

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15  
16 \_\_\_\_\_  
17 Patricia M. Haynes, CSR  
18 Notary Public

19 My commission expires July 30, 2010  
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## 102 ERRATA SHEET

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MICHAEL INGOLDSBY